

2003

The United States' Role In The Exculpation of Japanese Biological Warfare Units from War Crimes Committed During World War II

Catherine Fisco

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**THE UNITED STATES' ROLE IN THE EXCULPATION
OF JAPANESE BIOLOGICAL WARFARE UNITS
FROM WAR CRIMES
COMMITTED DURING WORLD WAR II**

BY

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1992

**A THESIS SUBMITTED IN PARTIAL FULFILLMENT OF THE
REQUIREMENTS FOR THE DEGREE OF MASTER OF ARTS IN THE
DEPARTMENT OF ASIAN STUDIES AT SETON HALL UNIVERSITY**

SOUTH ORANGE, NEW JERSEY

JULY 2003

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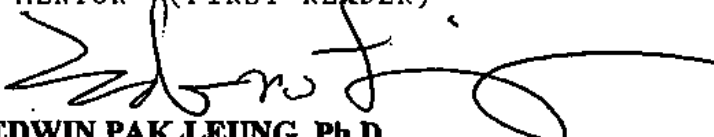
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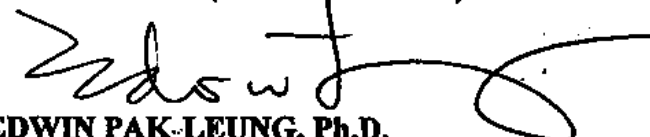
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Table of Contents

	<u>Acknowledgements</u>	iv
	<u>Abstract</u>	v
I.	<u>Introduction</u>	1
II.	<u>Historical Background</u>	4
	1. History of Chemical and Biological Warfare.....	4
	2. Overview of CBW Programs.....	7
	A. German Program.....	7
	B. British Program.....	9
	C. Russian Program.....	10
	D. American Program.....	12
	Japanese Program.....	13
	3. Promises of Justice.....	16
	4. Allied POWs and CBW Experimentation.....	21
III.	<u>The War Crimes Trials</u>	25
	1. The U.S. as Manipulator of Tokyo War Crimes Trial.....	25
	A. MacArthur in Charge.....	25
	B. SCAP & IMTFF.....	26
	C. UNWCC & SWNCC.....	28
	2. Aims of the War Crimes Trials.....	29
	3. Problems Facing the Prosecution.....	31
	4. SCAP's Demands.....	34
	5. The Tokyo War Crimes Trial.....	35
	6. U.S. Influence over Other War Crimes Trials.....	37
	A. Australia.....	37
	B. New Zealand.....	39
	C. China.....	40
	D. Russia.....	43
	E. Other War Crimes Trials.....	47
IV.	<u>The United States, the CBW War Criminals, and the Trials</u>	50
	1. Investigations into Japanese CBW.....	50
	2. The Conflicts within the U.S. Authorities.....	54
	A. The Scientists.....	54
	B. Military.....	59
	C. Political.....	63

	1. <i>Anti-Communist Supporter in Asia</i>	63
	2. <i>Exculpation of Emperor Hirohito</i>	65
V.	<u>The Legacy of the Past</u>	72
	1. Renunciations of CBW.....	72
	A. Geneva Protocol of 1925.....	72
	B. 1972 Biological Weapons Convention & 1989 Anti- Terrorism Act.....	73
	2. The Victims.....	75
	3. The Perpetrators.....	77
	4. Post World War II U.S. use of CBW.....	79
	A. Korean War.....	79
	B. Vietnam War.....	80
	C. Gulf War.....	82
	5. CBW Terrorism.....	83
VI.	<u>Conclusion</u>	89
	<u>Bibliography of Selected Works</u>	98

Acknowledgements

The origin of this thesis began as a paper for Dr. Osuka's "History of Traditional Japan" course in Spring 2001. At his suggestion, I resolved to pursue the topic further and expand the paper into this thesis. This task could not have been accomplished without the noble mentorship of Dr. Osuka. Throughout the writing of this paper, as I was expecting my first child, his patience, understanding, and advice, not only in regards to this thesis, but also to my new role in life were invaluable.

I also acknowledge with gratitude, additional faculty of the Asian Studies Department at Seton Hall University. I posthumously thank Dr. Gilbert Mattos for encouraging me to pursue my M.A. in Asian Studies. I also thank Dr. Edwin Leung for continually making himself available during his incredibly demanding schedule. Additionally, I thank the very inspiring Dr. Deborah Brown who urged me to challenge myself and to write this thesis. Dr. Michael T. Kikuoka, with his continuing pursuits in research, has also motivated me in my studies.

Finally, this thesis could not be completed without the support and encouragement of friends and family. I thank Mr. Wes Injerd for his advice, ideas, and suggestions. I especially thank Mrs. Kathleen Cunningham for her assistance and constant support, and Mr. and Mrs. Joseph Miller III for their time, help, and use of their computer. I put forward my deepest gratitude to my parents, Joseph and Yoriko Miller, and my husband Robert, for their unwavering encouragement and assistance, but most of all, for their confidence in me.

Abstract

Despite the chemical and biological warfare ban of the Geneva Protocol of 1925, the Japanese government developed a biological warfare program resulting in the creation of Unit 731 and its detachments. The atrocities committed by these units during World War II involved the experimentation of such warfare on human victims. Although other Protocol signatory nations were involved in their own biological warfare programs, none had ever used humans as “guinea pigs.”

The focus of this paper is the role of the U.S. in the prevention of the Japanese biological warfare units’ prosecution for war crimes. The U.S., as the sole Occupier of Japan, manipulated the outcomes of the Tokyo War Crimes Trial and trials of other nations affected by Japanese wartime activities. The “deal” of Japanese biological warfare experts’ data on humans in exchange for the U.S. promise of war crimes immunity is also discussed. The role of three American factions behind this conspiracy, American scientists, military leaders, and politicians, are examined in detail.

This paper also presents an overview of the international community’s attempts at the renunciation of chemical and biological weapons. It also discusses the full impact “the immunity deal” has had on victims of Japanese biological warfare; the former biological warfare experts; and chemical and biological warfare use in the Korean War, Vietnam War, Gulf War, and by terrorists today. The exposure of these outcomes aspires to avoid unaccountability and non-punishment of future users of such weaponry, which may in turn curtail the use by other potential users.

I. Introduction

Japanese Army Units 100, Ei 1644, 565, 2646 and most notoriously, Unit 731 were special military divisions which existed solely for the purpose of carrying out research in a field banned by the international community. Soon after the Japanese occupation of Manchuria, these units began conducting numerous chemical and biological warfare¹ experiments and vivisections on POWs and civilians. Eventually, these units expanded and operated not only in Manchuria, but throughout all other Japanese occupied territories during World War II. While performing these experiments, the members of these units proclaimed it was “in the name of science,” however a more accurate account reveals their true objective was to perfect a banned war technology. In the course of these experiments, the Japanese “doctors,” without the slightest trace of squeamishness, mortification or compunction heartlessly butchered thousands of people.² The story of Japan’s CBW programs and research “implicates more than half the persons tried by the International Military Tribunal for the Far East³, and more than 5,000 others who worked on the BW programme [sic] in some capacity.”⁴

There have been numerous shocking documentaries, news stories and books written about the barbarities. However, what is even more shocking is that not one member of any of these units have ever stood before a trial and been held accountable for their atrocities. But what is most scandalous, and has only recently come to light, is that the United States was responsible for these men escaping culpability. The United States,

¹ Henceforth to be referred to as CBW.

² The Japanese unit members referred to their “patients”/ prisoners as *maruta* (logs), a term that demonstrates their victims were not even regarded as human beings.

³ Henceforth to be referred to as IMTFE.

⁴ Peter Calvocoressi, Guy Wint, and John Pritchard, *Total War: The Causes and Courses of the Second World War*, (London: Viking, 1989), 1201-5.

in-exchange for the information accumulated by these units, ensured that the Japanese BW informers were granted immunity and that they never once appeared before a court.

In this paper, I intend to focus on the unwillingness and failure of the United States to bring these war criminals to prosecution and the consequences as it relates to events in the world today. I chose to focus on the United States' role as the key architect in the inculcation of these unit members because: 1. as the head of occupation operations in Japan, the United States had the authority and opportunity to bring these units to trial, 2. as head of the occupation authorities or SCAP (Supreme Commander for the Allied Forces), U.S. General Douglas MacArthur had the authority and means to locate and prosecute said units, 3. General MacArthur as SCAP formed the IMTFE which conducted the Tokyo War Crimes Trial and hence, retained much influence over the proceedings, and finally, 4. General MacArthur as SCAP also created and controlled the UNWCC (United Nations War Crimes Commission) which was responsible for war crimes investigations, thereby allowing for the manipulation of which discoveries had actually entered into the Tokyo War Crimes Trial.

Additionally, I will address how the ultimately thousands of judicial proceedings involving almost 6,000 Japanese nationals and their collaborators were conducted not only in Japan but also in Australia, New Zealand, China, Russia, as well as other nations—however, as with the Tokyo Trial, at the insistence of the United States, none would engage the topic of CBW crimes.

I will explain how the United States government had much to gain, militarily and politically, in avoiding any international attention to CBW and how they were successful

in preventing the mention of the topic in any of these trials. The role of the American scientific community in, and their influence over such thinking will also be discussed.

Finally, I will focus on how these actions or "inactions" taken by the United States regarding CBW consequentially affected not only later wars and military conflicts, but also the victims and their descendants of these heinous experiments.

II. Historical Background

1. History of Chemical and Biological Warfare

Any fair-minded individual cannot deny the significance of “the spirit of conquest” in terms of “world advancement.”⁵ For many civilizations, this “spirit of conquest” has equated to “implements of warfare.”⁶ The first weapon used by man was most likely his fists. When his opponents’ fists were stronger than his, he most probably improvised the club. Once his opponents’ clubs became larger and wieldier than his, he probably graduated to a spear, and so on. Even today, man is continuing to strive for the development of the “ultimate weapon.” Notwithstanding, even before the “invention” of armaments, naturally occurring “weapons” have existed before mankind. It was only a matter of time before mankind would procure these naturally occurring diseases into weapons.

The concept of biological warfare is not by any means a recent “invention.” Diseases and plagues have affected the outcomes of wars and battles throughout history. In fact, one can find incidences of “naturally occurring” and “chance” infections of plagues wiping out more military forces than all of the man-made weapons. For instance, in a theory of the fall of the Incan Empire, it is hypothesized that it was a severe small pox outbreak which weakened the entire Incan civilization shortly before the entrance of the Spanish. As a consequence of the outbreak, the Spaniards were able to conquest the Incas without difficulty. The six most commonly observed outbreaks during war times

⁵ Major Leon A. Fox, “Bacterial Warfare: The Use of Biologic Agents in Warfare,” *The Military Surgeon* 72, no. 3 (March, 1933): 191.

⁶ Ibid.

are: "(1) The enteric fevers, typhoid and the paratyphoid; (2) The dysenteries; (3) Cholera; (4) Typhus; (5) The plague, bubonic plague, the Black Death; (6) Smallpox."⁷

It is not surprising, therefore, that someone would eventually reflect on the devastation brought on by these naturally occurring outbreaks and ultimately desire the ability to manipulate and harness these diseases for use as a military weapon. Tales of the "poisoning" of enemies by throwing the bodies of diseased victims into their wells can be found in accounts of ancient times.⁸ One account of the origin of the Black Death epidemic is as follows:

The Tartars were besieging the Genoan trading outpost of Caffa (now Feodosia) on the Crimean coast in 1346, when plague broke out among them. Turning a catastrophic epidemic disease into a weapon, the Tartars lobbed their dead by means of catapults over the walls, and the Genoans, soon plagued by plague, took to their ships and returned to Genoa: from whence the Black Death soon engulfed the whole of Europe.⁹

History also shows mankind's use of BW as an extermination tool. A prime example is the British and U.S. militaries' deliberate attempt at exposing the highly susceptible Native American population to small pox through disease laden blankets.

In 1763, Sir Jeffrey Amherst, commander of the British Army, wrote to Colonel Henry Bouquet, stationed on the Ohio frontier, that "you will do well to try to (infect) the Indians by means of blankets as well as to try every other method that can serve to extirpate this execrable race."¹⁰

In more recent history, the reasons behind the support of CBW are twofold. First and foremost, is its cost-effectiveness. Self-replicating CBW agents are far less expensive to produce than their manufactured conventional counterparts. Additionally, in

⁷ Ibid., 194.

⁸ For other examples of BW in ancient times from as early as 300 B.C., see article by Daniel J. Dire, "eMedicine-CBRNE-Biological Warfare Agents," 2, MD, FACEP, FAAEM, at <http://www.emedicine.com/emerg/topic853.htm>; Internet.

⁹ Anthony Daniels, "Germs Against Man," *National Review* 53, no. 23 (December 3, 2001): 2.

¹⁰ Ibid.

comparison to tons of conventional munitions, only small amounts of CBW agents are needed to overcome the same sized area. "Experts estimate, for example, that effectively disseminated, as little as eleven pounds of plague bacterial paste could have a direct military impact on one square kilometer- and could promote the spread of disease over wider areas."¹¹

Additionally, as opposed to conventional weapons, after an impact by CBW the physical environment of the target area would be virtually "untouched," therefore allowing occupational forces not only an easier access to such territories, but also the circumvention of rebuilding costs.¹²

Yet another reason for the support of CBW is its "ultimate" psychological weapon capacity. With its odorlessness and invisibility, CBW was thought "to provoke such terror as to destroy troop morale and induce panic among civilians."¹³

However despite the prevalent "advantageous effectiveness of CBW as a weapon" rationale, a report to the League of Nations concluded otherwise. It stated:

(a) The effects of bacterial injury cannot be limited or localized: (b) Modern water purification methods protect against the organisms of typhoid and cholera; (c) Plague is a disease that would be as dangerous for the force using the organisms as for the attacked; (d) The danger from typhus has been exaggerated: (e) Modern sanitary methods are effective in controlling communicable diseases.¹⁴

As a result of the dispatch of this summary, the interest in the question of CBW had significantly waned.

¹¹ Charles Piller and Keith R. Yamamoto, *Gene Wars: Military Control over the New Genetic Technologies*, (New York: Beech Tree Books, 1988), 36.

¹² Ibid.

¹³ Ibid.

¹⁴ Fox, "Bacterial Warfare," 189.

2. Overview of CBW Programs

Despite the League of Nations report and the international community's dwindling interest in CBW, the subject was once again thrust into the limelight. On June 19, 1925 in Geneva, perhaps in direct response to the use of CBW by the Germans during World War I, a protocol was established concerning the prohibition of CBW.¹⁵

Although the Geneva Protocol was created to prohibit CBW, preparations for the Geneva Convention actually caused a renewal of interest in the subject. The fact that a convention had to be called to discuss the prohibition of CBW made many of the signatory nations that much more interested in the subject. Additionally, perhaps as a result of the "implements of warfare" for "world advancement" mentality mentioned previously, the ban on CBW made many signatory nations take the topic more seriously as well as "take a closer look."

A. German Program

During the year of 1911 in Germany, a committee consisting of professors and industrialists was established to study "industrial poisoning elements."¹⁶ Their main focus was "the survey of toxicity of German industrial products"¹⁷ for the purpose of studying methods of eliminating them. Consequently, through this "defensive based" research the quest for "offensive research" soon followed. Eventually by 1915, the Germans were able to successfully attack Allied forces with nerve gas.¹⁸

¹⁵ The stipulations found in the Protocol are found in Section V of this paper.

¹⁶ The Army Medical College, "Fifty Years of the Army Medical College" (1936): 89, quoted in Kei-ichi Tsuneishi, "C. Koizumi: as a Promoter of the Ministry of Health and Welfare and an Originator of the BCW Research Program," *Historia Scientiarum*, no. 26 (1984): 100.

¹⁷ Ibid.

¹⁸ For a more detailed account of Germany's research and implementation of nerve gas, see Eugene Kogon et al. (ed), *Nazi Mass Murder: A Documentary History of the Use of Poison Gas*, (Yale U.P., 1994), source gratefully provided by Fr. L. E. Frizzell.

Surprisingly the Germans later became one of the few signatory nations of the Geneva Protocol of 1925 who actually *officially*¹⁹ forbade any and all offensive research. Adolph Hitler himself personally opposed CBW and demanded the German CBW researchers to operate only under his extreme restrictive orders.²⁰ High-ranking Nazi's officers, who fully supported the German scientists' research,²¹ however, defied Hitler's ban which ultimately resulted in ghastly experiments such as the infestation of typhus infected lice²² on concentration camp detainees. However aside from such experiments and Germany's experiences with nerve gas during World War I, the Geneva Protocol and Hitler's opposition to CBW caused the creation of the German CBW program to originate much later than their counterparts'. It is speculated they did not begin an actual BW "program" until around 1940. As a result, the Nazi's CBW research never neared the level of advancement as that of other nations. "The Nazis never established a workable, systematic program for biological warfare."²³

¹⁹ Emphasis added.

²⁰ Friedrich Hansen, "Towards a History of German Biological Warfare," (*Zur Geschichte der Deutschen Biologischen Waffen*), 1999, (June 1989): passim, quoted in Sheldon H. Harris, *Factories of Death: Japanese Biological Warfare, 1932-45, and the American Cover-up*, (New York: Routledge, 1994), 160-1.

²¹ For more information regarding incidences of Germany's BW experimentation, such as the alleged charge of German BW testing in the Paris Metro during the mid-1930's, see Martin Hugh-Jones, "Wickham Steed and German Biological Warfare Research," *Intelligence and National Security* 7, no.4 (1992): 379-402; War Department, *A Review of German Activities in the Field of Biological Warfare*, (ALSOS Mission), by Major J. M. Barnes et al., Declassified Intelligence Report, (Washington, D.C., September 12, 1945).

²² Piller and Yamamoto, *Gene Wars*, 36.

²³ Ibid.

B. British Program²⁴

The British were one of the Geneva Protocol signatory nations whose interest was stimulated by the 1925 ban and as a result the Porton Down²⁵ research facility was established. Their biological warfare research began in 1934 purely for defensive purposes. They accumulated “stocks of vaccines fungicides, and insecticides”²⁶ to respond to any Nazi attack. By 1940, with the Germans ever-increasing victories, the British were finally prompted to develop offensive BW. Their program “concentrated heavily on anti-animal and anti-crop diseases.”²⁷

In later years, the British teamed up with Americans to further develop BW. America’s Fort Detrick and England’s Porton Down worked in partnership to develop CBW weapons as well as a defense against such weapons.²⁸ Although Americans manufactured it, the Allies’ first biological bomb, a four-pound anthrax device, was based on a British design²⁹ but was never used. Furthermore, the British produced and stockpiled “...5 million cattle cakes impregnated with anthrax, intended for use over Germany. These too were never used.”³⁰ However, “despite overwhelming evidence

²⁴ The British and Canadian CBW programs were a predominately partnership-collaborative effort. For brevity purposes the Canadian CBW program will not be covered in this paper. Information on this CBW partnership can be found in John Bryden, *Deadly Allies: Canada’s Secret War, 1937-1947*, (Collingdale, P.A.: DIANE Publishing Co., 1998). [DIANE is an acronym for Defense Information Access Network.]

²⁵ For more information on Porton Down’s CBW research, see Brian Balmer, “Killing ‘Without the Distressing Preliminaries’: Scientists’ Defence of the British Biological Warfare Programme,” *Minerva: A Review of Science, Learning and Policy* 40, no. 1 (2002): 57-75; Rob Evans, *Gassed: British Chemical Warfare Experiments on Humans at Porton Down*, (London; House of Stratus: 2000).

²⁶ Piller and Yamamoto, *Gene Wars*, 37.

²⁷ Milton Leitenberg, “Biological Weapons in the Twentieth Century: A Review and Analysis,” (paper prepared for the 7th International Symposium on Protection against Chemical and Biological Warfare, Stockholm, Sweden, June 2001), 2, available from <http://www.fas.org/bwc/papers/bw20th.htm>; Internet; accessed July 4, 2003.

²⁸ As with Canada, an arrangement was also established with Australia, “whereby research was conducted by Porton Down, development by Detrick, and the others’ vast and little-used territories became field test sites.” (Piller and Yamamoto, *Gene Wars*, 39).

²⁹ Ibid., 37.

³⁰ Leitenberg, “Biological Weapons in the Twentieth Century,” 3.

from intelligence leaks and declassified documents, the British government steadfastly holds to this day that it has never acquired biological agents in quantities large enough for offensive use.”³¹

C. Russian Program

An estimated date of the Soviet CBW program’s creation is around 1926 when it is alleged they concentrated “on typhus as a BW agent, ...[and] also included an aircraft-mounted dispenser for *Yersinia pestis* (Plague) which reportedly sprayed ‘an emulsion’ of the agent.”³² A brief overview of the early years of the Soviet research on pathogenic microorganisms is as follows:

In 1928, Red Army authorities decided to create a laboratory on vaccine and serum research at the Vlasikha estate....The young scientist Ivan Velikanov was appointed head of the laboratory. In 1931, a laboratory for anthrax research was established in Tobolsk, Siberia, and in 1933, a secret bacteriological laboratory was opened at Pokrovskiy Monastery in the town of Suzdal to research highly pathogenic agents. The famous political and military official Kliment Voroshilov was one of the first heads of the Soviet BW program in the 1930s.³³

All facilities were under the military direction of the Soviet Ministry of Defense (MOD). One such facility was located on Vozrozhdeniye Island. It was a test site in the Aral Sea. The reasoning behind the selection of Vozrozhdeniye Island is twofold. The island was an open-air testing ground but with “sparse vegetation, hot, dry climate, and sandy soil...reduc[ing] the chances that pathogenic microorganisms would survive and spread.”³⁴ Secondly, the island was located in a geographically isolated setting, which

³¹ Piller and Yamamoto, *Gene Wars*, 37.

³² US Army Chemical Intelligence Branch, *Soviet Chemical Warfare and Biological Warfare Preparations and Capabilities*, by Walter Hirsch, German Intelligence Report 786604, (Washington, D.C., 1951), quoted in Leitenberg, “Biological Weapons in the Twentieth Century,” 1.

³³ *Monterey Institute of International Studies*, CNS Occasional Papers, “Former Soviet Biological Weapons Facilities in Kazakhstan: Past, Present, and Future,” Interview with specialists from the NCB, 1, n.4, available from <http://www.cns.miiis.edu/pubs/opapaers/op1/op1.htm>; Internet; accessed July 4, 2003.

³⁴ Interview with a member of the 1990 Kazakhstani delegation to Vozrozhdeniye Island, November 1998. *Ibid.*, 3.

not only prohibited the spread of any pathogens to the bordering mainland regions by animals or insects and but also deterred unauthorized access to the top secret site.³⁵

Although a portion of the island laid in Kazakhstan and the other in Uzbekistan, in 1936 the entire island was officially under the authority of the Soviet MOD for use by the Red Army's Scientific Medical Institute.³⁶ However due to security problems, the island was evacuated in the fall of 1937.

Immediately after the surrender of the Japanese at the end of World War II, the Soviets were able to capture some of the data from the Japanese BW programs "...including architectural plans for building facilities, and [they] apparently adapted these in building newer facilities in the USSR in 1946."³⁷ Additionally in Soviet occupied Germany, they acquired "industrial fermentation technology" and searched "for usable military and industrial equipment" to ship back to the USSR³⁸ for continuing research.

In 1952 the Soviet government decided to continue their BW research and testing on Vozrozhdeniye Island once again. There, "samples of military hardware, equipment, and protective clothing reportedly passed field tests."³⁹

Finally, in 1973 the creation of the All-Union Production Association Biopreparat, i.e. the Soviet Union's biological warfare program, was approved by the Soviet government. This organization was comprised of approximately "...40 research

³⁵ Vozrozhdeniye Island was adjacent to Komsomolskiy Island, however with the aridness of the area the water has receded, causing the two islands to become one. Therefore the original premise of the island's isolation preventing the access to or spread of pathogens is now unsound. Ibid.

³⁶ It was later transferred to Kirov in 1942 and is now known as the Scientific Research Institute of Microbiology. (Anthony Rimmington, "Conversion of BW Facilities in Kazakhstan," Center for Russian and East European Studies, the University of Birmingham (UK), undated research paper). Ibid., 2.

³⁷ Leitenberg, "Biological Weapons in the Twentieth Century," 1.

³⁸ Ibid., 2.

and development (R&D) and production facilities. In addition to managing the civilian biotechnological industry and R&D, Biopreparat was actively involved in military BW programs.”⁴⁰ Activities included weaponization and testing of “...anthrax, tularemia, brucellosis, plague, typhus, Q fever, smallpox, botulinum toxin, ebola, marburg and Venezuelan equine encephalitis.”⁴¹

There were numerous Biopreparat facilities scattered across the region—from Belarus to Siberia to Kazakhstan.⁴² The program was so large and widespread that it was “roughly 10 times larger than U.S. CBW intelligence specialists had estimated prior to the Soviet breakup.”⁴³

D. American CBW Program

The United States’ BW programs originated much later than other Allied countries’. During the 1930s America was still recovering from the Great Depression. All monies and efforts were being poured into the social welfare programs. Military spending was of the lowest priority. There were no funds to spend on sophisticated weaponry, especially during peacetime. However, the impending war in Europe caused the U.S. military’s interest in BW to intensify throughout 1939 and 1940. Top military and civilian doctors, bacteriologists, chemists, and technicians in the top of their fields were selected to form a committee. They were to prepare, review, and discuss reports

³⁹ *Monterey Institute of International Studies*, “Former Soviet Biological Weapons Facilities in Kazakhstan,” 3.

⁴⁰ Laurie Garrett, “Inside Russia’s Germ Warfare Labs,” *Newsday*, August 10, 1997, A5, A38-A39; Anthony Rimmington, “From Military to Industrial Complex? The Conversion of Biological Weapons Facilities in the Russian Federation,” *Contemporary Security Policy* 17 (April 1996), 87, quoted in *Monterey Institute of International Studies*, 2.

⁴¹ “Soviet Union, Biopreparat, Biological Weapons, Chimera,” in *ZKee Archives*, Category: War and Weaponization, 1, available from <http://www.zkee.com/archives/archive10003.html>; Internet; accessed July 3, 2003.

⁴² *Ibid.*, 2.

and determine whether BW was a viable threat and if so, create a defensive BW program.

Their rationale for the development of offensive BW weapons can be summed as follows:

The wise assumption is that any method which appears to offer advantages to a nation at war will be vigorously employed by that nation. There is but one logical course to pursue, namely, to study the possibilities from every angle, make every preparation for reducing its effectiveness, and thereby reduce the likelihood of its use.⁴³

With the bombing of Pearl Harbor in 1941, the United States was thrust into World War II, resulting in the official commencement of the American BW program when Camp Detrick⁴⁵ in Frederick, Maryland was established as the chief research installation of BW. At this site they not only conducted large scale anti-animal and anti-crop research, but perfected and manufactured their delivery systems by such means as aerial sprays, antipersonnel mines, and a variety of bombs.⁴⁶

At the end of World War II, the European allies were set to task in rebuilding their cities and economies. The United States, however, fared much better and even emerged more powerful than before the war. As a result, amongst the Allies, the United States took on the majority of responsibility for CBW research after the war's end. Postwar research and use of CBW technology are discussed later in this paper.

E. Japanese CBW Program

In contrast to the United States' early origins of their BW programs, the Japanese military was growing increasingly powerful. It had gained significant influence in the

⁴³ Joseph D. Douglass Jr., "Chemical and Biological Warfare Unmasked," *Wall Street Journal*, November 2, 1995, available from <http://infomanage.com/nonproliferation/chemical/chemwar.htm>; Internet; accessed July 3, 2003.

⁴⁴ Special Consultant on Biological Warfare, "Activities of the United States in the Field of Biological Warfare," a Report to the Secretary of War by George W. Merck, (n.d.), RG 165, Entry 488, Box 182, 6-7, National Archives, quoted in Harris, *Factories of Death*, 153-4.

⁴⁵ Also cited as "Fort Detrick" in various sources.

⁴⁶ Other American sites, such as the Vigo, Indiana production plant, grew mass amounts of botulinus toxin for botulism bombs. (Piller and Yamamoto, *Gene Wars*, 37.)

government and was expanding its territories by occupying several locations in China, namely Manchuria, and was victorious in border skirmishes with the Soviet Union.

Japan's BW program began in 1928 with a prominent physician and graduate of Kyoto University named Ishii Shiro traveling to Europe to investigate biological weaponry. Upon his return he urged military leaders to provide a means to research BW and to cultivate the skill of waging it. In 1932 he founded the Epidemic Prevention Laboratory in a military medical school in Tokyo with full support from the military.⁴⁷ There he conducted research on defensive methods against BW weaponry. Various other locations, such as university medical laboratories in Tokyo, Osaka and Kyoto were made use for the purpose of research and experimentation.

At the same time of the opening of the Epidemic Prevention Laboratory, Ishii set up a unit in Manchukuo where he produced offensive weapons and studied the use of these weapons on Chinese prisoners.

Soon the unit would reorganize as Japan's territories and BW program grew resulting in the establishment of other locations, including a site located on the outskirts of Nanking in 1937. This detachment was staffed with the best and brightest biochemists and physiologists who were head hunted, bought or conscripted by the Japanese Army from the most reputable university medical faculties in Japan.⁴⁸ Here, delivery systems were perfected and mass amounts of bacteria were produced. Yet another detachment, Unit 100, under the command of Wakamatsu Yujiro, was created to study application and prevention of animal diseases.

⁴⁷ "Apparently the effort gained even more momentum when, the Japanese arrested Russian spies and charged them with allegedly carrying cholera causing bacteria to sabotage the Japanese water supply." (Piller and Yamamoto, *Gene Wars*, 34).

⁴⁸ Calvocoressi, Wint, and Pritchard, *Total War*, 1202-5.

By 1939 Ishii, then a general had established the Pingfan facility⁴⁹ and was followed by eighteen smaller installations.⁵⁰ At Pingfan, many weapons were produced from deadly diseases such as cholera, typhoid, and dysentery.⁵¹ One of their most successful outputs was “the weaponization of the organism that causes anthrax.”⁵² With information collected at the war’s end, “the Soviets estimated that at its peak Pingfan was an industrial scale plant capable of producing more than 500 pounds of bacteria per day and breeding 500 million plague-carrying fleas a year.”⁵³

On August 1, 1940, Ishii’s unit was renamed the Epidemic Prevention and Water Purification Department of the Kwantung Army,⁵⁴ although after 1941 it was more commonly referred to as Manchukuo Unit 731.⁵⁵ Kitano Masaji would be Ishii’s successor of this unit from early 1942 until spring 1945.

In summary, far in advance of the Allies, the Japanese possessed their own weapons of mass destruction, and were not averse to using them where it seemed profitable to do so.⁵⁶

Field trials of Army biological munitions were conducted, first in Manchuria and then in China Proper. Attacks were made at Ningpo in 1940, at Changteh in 1941, in the Chekiang offensive of 1942 (in the revenge attacks that followed the Doolittle Raid), and elsewhere. Early (and as it happens exceptionally accurate) Chinese medical and Intelligence reports were brought to the personal attention of President Roosevelt and Prime Minister Churchill: their experts found them unconvincing. Later the mad Japanese medical scientists operated in Burma, Malaya, French Indo-China, Thailand, the Netherlands, East Indies and New Guinea. They applied their skills at Nomonhan against the Russians and sent saboteurs across the Soviet Union itself in a succession of secret missions carried out over a number of years, allegedly

⁴⁹ Pingfan is near the city of Harbin in the then occupied northeastern China.

⁵⁰ Piller and Yamamoto, *Gene Wars*, 34.

⁵¹ *Ibid.*, 34-5.

⁵² *Ibid.*

⁵³ *Ibid.*, 35.

⁵⁴ This title ironically describes the very opposite of its real aims.

⁵⁵ Yuki Tanaka, *Hidden Horrors: Japanese War Crimes in World War II*, (Boulder, C.O.: Westview Press, 1998), 136.

⁵⁶ Calvocoressi, Wint, and Pritchard, *Total War*, 1201.

- in response to Russian biological warfare attacks carried out against the Japanese in China and Manchuria. A ship carrying a biological warfare assault team was dispatched to Saipan to slow down the American advance: it was sunk *en route* by an American submarine. Funds amounting to a ten million yen annual budget were allocated for offensive BW research as the B29 raids on Japan intensified. The money, as always, was channeled through the Kwantung Army. Production facilities increased more or less continuously: Three million rats were to be ready for use by September 1945; storage of the food to sustain them required a four-storey [sic] building. A proposal to employ BW following the defeat of Japanese forces on Iwo Jima was only turned down on the grounds that it would have no effect on the outcome of the Pacific War.⁵⁷

In the People's Republic of China official archives, it describes at least eleven BW attacks on Chinese cities through 1944.⁵⁸

3. Promises of Justice

On July 26, 1945, during a meeting in Potsdam, New York, U.S. President Harry Truman, British Prime Minister Winston Churchill, and Chinese Generalissimo Chiang Kai-shek issued the Potsdam Declaration, delineating the terms under which they would halt their war against Japan. It is essential to call attention to Article 10, where it states, "stern justice shall be meted out to all war criminals, including those who have visited cruelties upon our prisoners."⁵⁹ In further reading, a complete contradiction between the pledges in this particular statement and the actual postwar handling of the former Allied POWs of Japanese CBW camps debacle will be established.

In the decades prior to World War II, "...recognitions of the illegality and criminality of aggressive or unjust war on the part of nations..." had mounted, which "...resulted in such a well-established international legal custom as to put the defendants

⁵⁷ David Wallace and Peter Williams, *Unit 731: The Japanese Army's Secret of Secrets*, (Hodder & Stoughton: London, 1989), quoted in Calvocoressi, Wint, and Pritchard, *Total War*, 1205.

⁵⁸ Piller and Yamamoto, *Gene Wars*, 35.

⁵⁹ *Potsdam Declaration of July 26, 1945*, UCLA Center for East Asian Studies: East Asian Documents, available from <http://www.isop.ucla.edu/cas/documents/potsdam.htm>; Internet; accessed March 25, 2003.

on sufficient notice that their actions were in violation of a norm of conduct which the society of nations might enforce by criminal punishment.”⁶⁰

Additionally, the Allied authorities expected the Japanese to abide by the aforementioned Geneva Protocol of 1929 banning the use or research of CBW. Moreover, it was without a thought, assumed that Tokyo would observe commonly acknowledged standards of civilized behavior and principles of international law. In particular, The United States and England above all expected Japan to follow the regulations of the Geneva Convention of July 27, 1929, which concerned the protection and treatment of the Red Cross and POWs.⁶¹

However as the war progressed, the Western powers became more aware of the atrocities occurring in Asia. For example in January 1942, during a conference in London⁶² which primarily dealt with events occurring in Europe, the Chinese observer Wunz King, condemned the “inhumane treatment” conducted on his countrymen by the Japanese, and “pledged China’s unswerving commitment to ‘vindicate’ the ‘elementary principles of justice and morality.’”⁶³ He further assured in his warning to the Japanese that those responsible would be “equally dealt with according to law” and would be “held accountable therefor [*sic*].”⁶⁴

Hearing condemnations such as these, in addition to reports reaching the United States, Franklin D. Roosevelt on August 21, 1942 avowed that prosecutors “would make

⁶⁰ Joseph Berry Keenan and Brendan Francis Brown, *Crimes Against International Law* (Washington, D.C.: Public Affairs Press, 1950), 73, 75, 120, quoted in Philip R. Piccigallo, *The Japanese on Trial: Allied War Crimes Operations in the East, 1945-195*, (Austin: University of Texas Press, 1979), 19.

⁶¹ *Ibid.*, 3.

⁶² *Punishment for War Crimes: The Inter-Allied Declaration Signed at St. James Palace, London, on January 13, 1942, and Relative Documents* (London, 1942), 15, quoted in Piccigallo, *The Japanese on Trial*, 3. This conference dealt primarily with events which were taking place only in Europe at the time.

⁶³ *Ibid.*

'appropriate use of ...information and evidence in respect to these barbaric crimes of the invaders, in Europe and in Asia...'”⁶⁵ Furthermore, he thought that in fairness, perpetrators “should have this warning that the time will come when they shall have to stand in the courts of law in the very countries which they are now oppressing and answer for their acts.”⁶⁶

Additionally, as the European war neared its end, the other Allied nations began to deepen their focus on the state of affairs in Asia. Alongside the United States, the United Kingdom was one of such nations voicing their concern and admonition. Together, they promised they would not “forget these acts” or yield in their resolve to inflict “just punishment.” In May of 1945, the head of the French Committee for National Liberation, General Charles de Gaulle, stated to Tokyo that any Japanese found to have mistreated any citizens of France or Indochina, would certainly be held accountable as a “war criminal.”⁶⁷

Finally, to further emphasize the Allies’, especially the United States’ resolution to punish those who committed atrocities in the East, the United States Navy War Crime Director, John D. Murphy issued the following statement: “[The] resumption that civilized man is conscious of the wrongfulness of vicious brutal acts, especially after the

⁶⁴ Ibid.

⁶⁵ United Nations Information Organization, Information Paper No. 1, 1946, 7-8, quoted in Piccigallo, *The Japanese on Trial*, 3-4.

⁶⁶ Solis Horwitz, “The Tokyo Trial,” *International Conciliation* 465 (1950): 477-8, quoted in Piccigallo, *The Japanese on Trial*, 3-4.

⁶⁷ Supreme Commander for the Allied Powers, “Trials of Class ‘B’ and ‘C’ War Criminals: History of the Non-Military Activities for the Occupation of Japan,” (Tokyo, 1952), Monograph 5, 38-9; *New York Times*, May 13, 1945, quoted in Piccigallo, *The Japanese on Trial*, 4.

numerous specific warnings, constitutes adequate moral basis for imposition of individual criminal punishment."⁶⁸

During the postwar trials indisputable evidence was produced to prove that the Allied powers had lodged formal complaints with Japanese authorities as well as provided them with sufficient warnings of the consequences should they not adhere to the laws of war.⁶⁹

The countless issuance of warnings and threats were not unwarranted. As Americans and Japanese fought ferociously in the South Pacific Islands,⁷⁰ the tide began to turn in favor of the Allies. As the United States began to win the countless battles, their suspicions of Japanese BW practices were confirmed through discoveries made amidst the aftermath. For example, when a Japanese soldier killed in action was found with a copied dossier with the comment, "Great results can be obtained by contaminating their food and drink in kitchen by bacterial strategy,"⁷¹ the U.S. could not deny the Japanese troops' CBW objectives. Further illustrating their intentions was the discovery of a notebook on the body of a Japanese engineering officer. This particular notebook contained a listing of their available assortment of bombs. A notation read, "Special Bombs (TOKUSHUBAKUDAN): Mark 7—cities, water reservoirs, animals, personnel (bacillus) Example: Air Arsenal (KUSHU) Type 13 Experimental 1 kg Mark 7."⁷² An

⁶⁸ U.S. Department of the Navy, "Final Report of Navy War Crimes Program in the Pacific," submitted by the Director of War Crimes, U.S. Pacific Fleet to the Secretary of the Navy, (December 1, 1949), vol. 1, 122, quoted in Piccigallo, *The Japanese on Trial*, 5.

⁶⁹ Supreme Commander for the Allied Powers, "Trials of Class 'B' and 'C' War Criminals," 38; International Military Tribunal for the Far East, "Judgement," Tokyo, November 1948, vol. 2, 1117-1126, quoted by Piccigallo, *The Japanese on Trial*, 4.

⁷⁰ The most intense fighting occurred during 1943-1944.

⁷¹ Lt. Colonel Harold Fair to the Chief of Staff, October 5, 1944, Subject: Bacterial Warfare, quoted in Harris, *Factories of Death*, 167.

⁷² Memorandum for Major General Norman T. Kirk, War Department, Office of the Surgeon General, Washington, June 17, 1944, Rodriguez, Jr, Collection, quoted in Harris, *Factories of Death*, 167.

additional example, is the finding of yet another notebook found on the body of a Japanese airman listing bombs available to the Japanese Air Force, including one designated "Special Bomb," or "Bacillus Bomb."⁷³

Also, as the American troops gathered Japanese POWs, they discovered "...a significant number of medically trained personnel....doctors, medical corpsmen, nurses, pharmacists, and veterinarians scattered among the half-starved, fearful captives...."⁷⁴

Also circulating in government intelligence circles, were reports on CBW atrocities in the Japanese occupied areas on civilians and POWs. The United States government was not ignorant of Japan's "progress" in the field of CBW in China, especially. Accounts of Japan's CBW employment in China had been reported at length in the press as early as 1937. In August 1942, *The Rocky Mountain Medical Journal* summarized a thirteen-page report in an article with the headline, "Japanese Use the Chinese as 'Guinea Pigs' to Test Germ Warfare."⁷⁵

Furthermore, the fact that the FBI launched a nationwide investigation into Japanese-American pharmacists⁷⁶ for possibly engaging in CBW against "their fellow Americans," confirmed the United States' knowledge of Japan's wartime CBW program.

The following is the summary of one report from FBI Director, J. Edgar Hoover to the Director of Naval Intelligence and to Paul V. McNutt, Head of the Federal Security Agency:

The unnamed informant revealed that while serving in Japan in 1925...in Tokyo, he and his wife associated with a small group of "white persons," including several

⁷³ Ibid.

⁷⁴ Ibid., 165

⁷⁵ *The Rocky Mountain Medical Journal* 39, August 1942, 571-2, quoted in Harris, *Factories of Death*, 161, 164.

⁷⁶ Undeniably, after the bombing of Pearl Harbor, the racist paranoia, e.g. the internment camps was a key factor as well.

- German doctors. One of the Germans, while drunk, blurted out one day that the German doctors were in Japan solely to "teach Japanese the art of bacterial warfare and that some day Germany would get its revenge over the United States through the use of that mode of warfare." The informant recalled...that the German mentioned specifically the use of "anthrax bacilli (,)dysenary (*sic*) and typhus germs as some of the methods to be used."⁷⁷

In conclusion, the United States cannot deny they were knowledgeable of the Japanese CBW atrocities committed before and during the war.

4. Allied POWs and CBW Experimentation

With the end of the war in 1945, American Frank James' life as a POW in the Japanese occupied territory of Mukden, China was over. However his experiences of the "alleged"⁷⁸ experimentations were not immediately publicized. At a hearing 41 years later, he revealed why he and fellow former POWs subjected to similar experimentations had remained silent for so long.

We were required, when we came to the depot at Manila, on the way back from the prisoner of war camps, we signed a statement by the Army stating we would not tell before our experiences or conditions, what happened to us in the prison camps, before any audiences or the newspapers, under threat of court martial.⁷⁹

Innocently, James believed these orders were given in an effort to quell any additional anti-Japanese sentiment amongst the American public.⁸⁰

⁷⁷ H.T. O'Connor, Special Agent in Charge, to Director, Federal Bureau of Investigation, Milwaukee, January 14, 1942; John Edgar Hoover to Director of Naval Intelligence, and John Edgar Hoover to Honorable Paul V. McNutt, Washington, D.C., January 30, 1942. All FBI citations are from the first four volumes of FBIHQ main file 100-93216, provided to Harris under the Freedom of Information Act, as quoted in Harris, *Factories of Death*, 162. For further reading on the U.S. government's reaction to Japanese wartime CBW read Harris' chapter 12 entitled, "*Discovery of the secret of secrets*."

⁷⁸ The word "alleged" is included in this statement because classified documents, interviews and reports are still unavailable to the public to wholeheartedly state without a doubt that BW testing was performed on POWs. At the same time, this also implies that POWs' claims cannot wholeheartedly be refuted either.

⁷⁹ House of Representatives Veterans' Affairs Subcommittee hearing on September 17, 1986, 20, quoted in Harris, *Factories of Death*, 120.

⁸⁰ This sentiment falls in line with General Douglas MacArthur's campaign to make Japan the United States' ally in Asia.

Regardless of the American government's preventive measures, the media managed to catch wind of the POWs horror stories. As early as January 6, 1946, American newspapers such as *Pacific Stars and Stripes* and the *New York Times*⁸¹ simultaneously ran stories covering the atrocities suffered by the POWs—the latter specifically indicated that “...the POWs were inoculated with bubonic plague bacterium” amongst other claims.

In 1956, in a “Confidential” FBI internal memorandum, it is implied that the allegations by the POWs are acknowledged as fact:

Mr[.] James J. Kelleher, Jr, Office of Special Operations, DOD (Department of Defense), has volunteered further comments to the effect that American Military Forces after occupying Japan, determined that the Japanese actually did experiment with “BW” agents in Manchuria during 1943-44 using American prisoners as test victims...⁸²

During the 1970s Japanese journalists began running investigative reports on Japanese television concerning the deeds of Ishii Shiro and his “medical” units. It was the 1980s, however, when the issue was truly “brought out into the open” by Morimura Seiichi’s Japanese best-selling book entitled *The Devil’s Gluttony*. Based on extensive research, it was a fictitious account of Unit 731’s gruesome experiments. The subject matter included experiments performed on Allied POWs. Based on his research, Morimura is quoted as stating, “The victims were mostly Chinese, Koreans, and White Russians. But I have learned from various sources that they also included Britons, Dutch, Australians, New Zealanders and Americans.”⁸³

⁸¹ *New York Times*, January 6, 1946, 8, quoted in Harris, *Factories of Death*, 114.

⁸² John W. Powell, Jr, “Japan’s Biological Weapons: 1930-1945,” *Bulletin of Atomic Scientists* (October 1981): 48, quoted in Harris, *Factories of Death*, 115. Harris states that “information of the type in question is closely controlled and regarded as highly sensitive,” therefore the document quoted in this article is in Powell’s “personal FBI file” and not a public document.

⁸³ Interview in *Washington Times*, June 22, 1982, 1, quoted in Harris, *Factories of Death*, 116.

As more official documents became declassified, the controversial subject could be found in the media--from print to television documentaries. In October of 1981, one particularly incriminating article was written by a veteran journalist named John W. Powell, Jr. in the periodical, the *Bulletin of Atomic Scientists*. His findings were reported widely in the United States, Europe, and Asia.⁸⁴ Some of his allegations read:

[A]mong the human guinea pigs were an undetermined number of American soldiers, captured during the early part of the war and confined in prisoner-of-war camps in Manchuria...Official US reports reveal that Washington was aware of these facts when the decision was made to forgo prosecution of the Japanese participants.⁸⁵

These claims left the Japanese government no choice but to comment on the topic, which is significant on many levels. During a debate held in the Diet, for the first time, the Japanese government officially acknowledged that Unit 731 had actually existed and that, more importantly, it had committed heinous atrocities. Until this moment, attempts by the war crimes victims of the Pacific region to have the Japanese government even admit⁸⁶ war crimes of any kind had occurred, were at an impasse.

Responding to similar pressures as those of the Japanese Diet, American Congressmen attempted to accommodate the American public's demand for answers by holding a hearing. In 1982, a House Veterans' Affairs Subcommittee held this hearing which "lasted for less than one full day"⁸⁷ to listen to ex-POW and interested parties' testimonies. Alas, at the hearing's conclusion, only sympathetic comments by members in support of veterans' rights were presented. Nothing further investigation, hearings, or

⁸⁴ Ibid.

⁸⁵ Powell, "Japan's Biological Weapons," 44, quoted in Harris, *Factories of Death*, 116.

⁸⁶ Emphasis added.

⁸⁷ Ibid., 117.

reports were ever conducted. "The issue, as far as the Congressmen were concerned, was closed."⁸⁸

A subsequent hearing followed as a result of the persistence of the victims and their families. However, the objective of this hearing was to focus on the veterans' benefits and not on cover-ups, conspiracies, or war crimes. The Subcommittee Chairman began with the opening remark, "This committee does not have jurisdiction on the matter of war crimes."⁸⁹

⁸⁸ Ibid., 118.

⁸⁹ House of Representatives Veterans' Affairs Subcommittee hearings, September 17, 1986, 2, quoted in Harris, *Factories of Death*, 119.

III. The War Crimes Trials

1. The U.S. as Manipulator of the Tokyo War Crimes Trial

In essence, the Potsdam Declaration decreed what the basic guidelines for the trial and punishment of Japanese war criminals would be. Again, this declaration was endorsed by China, Great Britain, and the United States.⁹⁰ However, it was the United States who controlled and manipulated the most publicized war crime trial in the Pacific—the Tokyo War Crimes Trial.

A. MacArthur in Charge

In contrast to the occupation of Germany, which was a major issue that had been tirelessly discussed among the Allies, the occupation of Japan was arranged in a short matter of time and by the United States alone. Soon after the atomic bombs fell on Hiroshima and Nagasaki, United States President Truman announced his decision that the United States should be the exclusive “Occupiers of Japan.” He rationalized his decision with the reasoning that the United States had shouldered the brunt of military burden during the Pacific War.

The end of the war saw a power shift among the “world powers.” The formerly influential powers had weakened as a result of the destruction and the length of the war. Therefore, it is speculated that the other Allied Powers accepted the United States’ decision because they were busy repairing and rebuilding what was left at home. However in the case of the Soviet Union, who along with the United States emerged from the war strengthened, it is no doubt that America’s use and acquirement of the atomic

⁹⁰ The Potsdam Declaration was subsequently subscribed to by Russia *after* the signing on July 26, 1945.

bomb frustrated the Russians, thereby suppressing their protests for a joint occupation of Japan.

In the meantime, the United States Initial Post-Surrender Policy for Japan of August 29, 1945 was the basis for all occupation policies.⁹¹ The Far Eastern Commission (FEC) was founded as the “supreme policy-making body” “to formulate the policies, principles and standards” for the occupation.⁹² Although the American officials did pledge that the formulation of occupation policies would be a joint effort involving the FEC, the Post-Surrender Policy stated that when a discrepancy occurred, “the policies of the United States...govern(ed).”⁹³ It is for these reasons that the United States was allowed, unchallenged, to dictate and control the occupation of Japan, which critically affected the circumstances behind the prosecution of Japanese CBW practitioners.

B. SCAP and IMTFE

President Truman also decided to entrust command of the occupation to United States General Douglas MacArthur and designated him Supreme Commander for the Allied Powers (SCAP) on August 14, 1945. This meant, per Truman’s directions, that MacArthur would act “as an agent for the powers that had signed the instrument of surrender”⁹⁴ and was to “be given complete command and control” of Japan.⁹⁵

⁹¹ Edwin O. Reischauer, *The United States and Japan*, 3rd ed. (New York: Viking Press, 1965), 47, quoted in Piccigallo, *The Japanese on Trial*, 6.

⁹² Far Eastern Commission, “Activities: Report by the Secretary General, February 26, 1946-July 10, 1947,” Publication 2888 (Washington, D.C., 1947), 2-3; Reischauer, *United States and Japan*, 47, quoted in Piccigallo, *The Japanese on Trial*, 6.

⁹³ U.S. Department of State, “United States Initial Post-Surrender Policy for Japan,” August 29, 1945, part 2, Art. I, quoted in Piccigallo, *The Japanese on Trial*, 6.

⁹⁴ Arnold C. Brackman, *The Other Nuremberg: The Untold Story of the Tokyo War Crimes Trials* (New York: William Morrow and Company, Inc., 1987), 60.

⁹⁵ Harry S. Truman, *Year of Decisions: The Truman Memoirs, Volume I* (New York: Hodder & Staughton, 1955), 412, quoted in Piccigallo, *The Japanese on Trial*, 6.

MacArthur in turn formed the International Military Tribunal for the Far East (IMTFE) which would conduct the Tokyo War Crimes Trial. The IMTFE consisted of justices from the United States, Great Britain, China, France, Australia, Canada, New Zealand, the Netherlands, the Philippines, India, and the Soviet Union. Hence, in all outward appearances the tribunal seemed to consist of a fair representation of decision-makers. However in reality it derived its authority from SCAP. Thus, in contrast to the Nuremberg Trials which was the product of a four-power negotiation, the Tokyo trial was under the sole influence of the United States.⁹⁶

There were numerous tribunals held apart from the Tokyo War Crimes Trial. These trials however differed from those in Tokyo in that they conducted hearings on only class "B" and/or "C" war crimes. Differences in legislation existed, however a general definition of the classification of war crimes is as follows: "C" crimes, or "crimes against humanity", consisted of crimes against civilians before or during the war, for example, "...murder, extermination, enslavement, deportation and other inhumane acts..." "B" crimes encompassed "conventional crimes" or "...violations of the laws or customs of war, for example, murder; ill-treatment of civilian populations, POWs, civilian internees or hostages; plunder of public or private property, and the like..." Trials for these crimes were also under the jurisdiction of the IMTFE, further demonstrating the United States' overwhelming control over the trial proceedings.

Finally, "A" crimes consisted of "crimes against peace." Defendants who came under this category were those who were in command or "...who had instigated the war against the Allied nations and bore final responsibility for the various war crimes

⁹⁶ For comparisons between the Tokyo and Nuremberg tribunals, Piccigallo suggests: Horwitz, "The Tokyo Trial," 475, 486; Robert K. Woetzel, *The Nuremberg Trials in International Law* (New York,

committed by their own forces.” Politicians and military leaders were those prosecuted under this category.⁹⁷ However, “[f]or a final review, [a] trial record was transmitted to the supreme commander [i.e. MacArthur], who might ‘at any time reduce or otherwise alter the sentence, except to increase its severity.’”⁹⁸

C. UNWCC & SWNCC

It is significant to mention that in October of 1943, Allied authorities *together*⁹⁹ did create the United Nations War Crimes Commission (UNWCC). It comprised of sixteen members, with the Soviet Union refusing to join. This commission was essentially a fact-finding organization which dispatched investigators to areas in Europe and Asia recently liberated by Allied forces.¹⁰⁰

More than any other, this multi-national body proved vital to the Allied war crime operation...There they scoured hundreds of miles, unearthing evidence, locating eyewitnesses, interviewing local inhabitants and taking depositions from released POWs. In this manner the UNWCC drew up and forwarded to prosecuting Allied nations lists of European and Eastern war criminals against who *prima facie* cases appeared tenable.¹⁰¹

Later in May 1944, the UNWCC splintered off a specialized committee otherwise known as the “Chungking Sub-Commission,” whose prime responsibility was to prepare lists of “Japanese suspected of war crimes in the China theater.”¹⁰² Their work however, was consigned to the lesser Japanese war crimes trials, thereby allowing them no participation or influence in the major war crimes trials such as in Tokyo. In this way, SCAP maintained control of the investigative information accrued, and more importantly,

1960), 226-32.

⁹⁷ Piccigallo, *The Japanese on Trial*, 33; Tanaka, *Hidden Horrors*, 1.

⁹⁸ U.S. Department of State, “International Military Tribunal for the Far East, Publication 2675” (Washington, D.C., 1947), Section 5, Art. 16, 17, quoted in Piccigallo, *The Japanese on Trial*, 13.

⁹⁹ Emphasis added.

¹⁰⁰ Piccigallo, *The Japanese on Trial*, 5.

¹⁰¹ Ibid.

¹⁰² Ibid.

through the control of this information, made it possible for them to have final word on what information and evidence was introduced in the trials. In other words, SCAP had total manipulative powers over the entire Eastern trials system.

The SWNCC (the State-War-Navy Coordinating Committee) "...was established in 1944 to prevent conflicting or overlapping jurisdictions from interfering with an orderly management of occupied Japan"¹⁰³ and operated from the Pentagon in Washington. Additionally, they were assigned the task of preventing any "national security" related information from entering into Communist access. The SWNCC's responsibilities and objectives will be discussed more in depth later.

2. Aims of the War Crimes Trials

As the "orchestrator" of the upcoming most publicly and internationally scrutinized war crime trial in the Pacific, the United States felt a pressing obligation to conduct the Tokyo War Crimes Trial fairly and impartially. They felt they were obligated to set an example for all other trials in the Far East by emphasizing that the purpose of the trials was purely for proving the guilt or innocence of the accused and not as a means of executing revenge. The emphasis of this belief in the following remarks by a judge advocate in his opening statement in an American navy trial of a Japanese officer exemplifies this stance:

It was and is the duty of the Allied Powers, the United Nations, to enforce the standards of international law and society, and to punish those who had violated the law and custom of war. It is the duty of the victor to do this, just as it is the duty of the police and the courts to apprehend, to confine, to try and to punish those who violate domestic criminal law. It is specious reasoning that contends that it is unfair for the conqueror to try the vanquished. The police, 'the forces of law and order,' must be stronger than the criminals. If not, the power of society to punish for wrongdoing would perish, for the criminal and his kin do not apply the standards of lawful society to punish the wrongdoer—as we found out in Germany after World

¹⁰³ Harris, *Factories of Death*, 208.

- ✓ War I. If the force of law and order ceases to be stronger than those who violate the standards of society, either revolution or chaos inevitably results. Therefore it is natural and proper that the victor nations, the 'law and order' nations of international society, should punish those individuals who have violated the laws and customs of international society, the laws and customs of war.¹⁰⁴

Additionally, the United States government wished to educate the Japanese public on the values of democracy by offering them the opportunity to witness firsthand, democratic principles in action. This is evident in

...that so soon after the cessation of hostilities...the victors set up military commissions, not for the purpose of meting out sentences in revenge...but for the purpose of ascertaining the guilt or innocence of the accused after a fair and impartial trial...¹⁰⁵

Furthermore, for almost a decade, by means of "an overbearing system of censorship,"¹⁰⁶ the Japanese government screened impartial reporting of facts and world crises from the Japanese public.¹⁰⁷ Hence, at the direction of General MacArthur, the trials were to be used as a tool to, again, "educate" the Japanese public in the "stark facts of Japanese atrocities."¹⁰⁸ SCAP further carried out this "education" by convincing several Japanese newspapers' representatives to agree "to publish explicit reports of the wartime behavior of their compatriots."¹⁰⁹

Additionally, the United States intended to reinforce the current international law of the time by "making an example out of" the accused Japanese war criminals in the hopes that it would discourage such criminal behavior in future wars.

¹⁰⁴ This is *some* of the opening remarks made by the judge advocate at the trial of Vice Admiral Hara at Guam. SCAP, "Trials of Class 'B' and 'C' Criminals," 123, quoted in Piccigallo, *The Japanese on Trial*, 44-5.

¹⁰⁵ SCAP, "Trials of Class 'B' and 'C' Criminals," 3-4, quoted in Piccigallo, *The Japanese on Trial*, 7.

¹⁰⁶ *Ibid.*, 44.

¹⁰⁷ In further reading it will be revealed how the United States government carried out the same censorship practices in America in regards to any media reports concerning the American CBW program, the Japanese CBW program, and the postwar deal between the former Japanese unit members and the American government.

¹⁰⁸ *New York Times*, September 15, 1945, quoted in Piccigallo, *The Japanese on Trial*, 44.

- Through their [American] participation in the “administration and enforcement” of civilized society’s established “fundamental laws and customs of war in accordance with the principles of humanity,” they believed, the international law of war would “take tangible form and deterrent effect to warn potential wrongdoers that society will punish those who violate the laws and customs of war.”¹¹⁰

In summarization, the Americans’ ultimate intent was for the Tokyo War Crimes Trial and its records in its entirety, to stand as “monuments to the fair.”¹¹¹

But by around the fall of 1948, the United States shifted their occupation policy from one of “reform” to one of “recovery.” SCAP, in its definitive aspiration for an “immediate,” non-punitive peace treaty with Japan, pressured the Allies to conclude all Eastern war crimes trials as early as possible. With the FEC recommendation that all remaining trials be concluded by September 30, 1948, the previously practiced “fair manner in which the war crimes program was handled,” was disregarded due to the prosecutors’ rushed execution of their remaining cases.¹¹² With the sudden announcement of the official ending of the trials, the attorneys had faced their last and final “monkey wrench.” I have jumped ahead, however and will now present the other challenges faced by the prosecution.

3. Problems Facing the Prosecution

The Allied prosecutors were faced with an almost impossible challenge. First and foremost, they encountered major difficulties in obtaining evidence. Whatever evidence to be found that was not destroyed by the Japanese was literally scattered throughout Japan and their occupied territories and would be difficult to locate. Similarly, witnesses,

¹⁰⁹ Ibid.

¹¹⁰ Ibid. For examples, Piccigallo recommends, “Opening Statement” of judge advocate in trial of Vice Admiral Hara Chuichi of the Imperial Japanese Navy, Navy Case No. 48; for more on the U.S. Navy’s Pacific war crimes program’s “deterrence purposes” see U.S. Department of the Navy, “Final Report,” Vol. I, 29, 80, 202.

¹¹¹ SCAP, “Trials of Class ‘B’ and ‘C’ Criminals,” 3-4., quoted in Piccigallo, *The Japanese on Trial*, 7.

whether ex-POWs or civilians, were repatriated, demobilized, or left stranded in locations unknown, leaving them unavailable for testimony. Likewise, the task of “identifying, locating, and apprehending” prospective defendants inside as well as outside of Japan proved extremely difficult.¹¹³ To fully understand the magnitude of the situation, in the total 192 days—from the Allied prosecutors opening statement on May 3, 1946 to the trial’s closing on January 24, 1947, “...102 witnesses, affidavits from another 1,200 witnesses and an additional 1,000 documents”¹¹⁴ were observed.

Amongst the prosecutors themselves, yet another dilemma existed. The IPS¹¹⁵ consisted of seventy-two attorneys from various countries and each brought with them the laws of their respective countries. Therefore, the indictment “had to be a compromise between the eleven legal systems represented.”¹¹⁶

As would be somewhat expected of an international group operating in a foreign country, the language difficulties were paramount. Unlike the Nuremberg Trials, incidences of communication problems between the attorneys and their clerical staff and witnesses greatly hampered their progress, resulting in prolonged proceedings.

A language and clerical staff of 104 Allied nationals and 154 Japanese and special preparation notwithstanding, simultaneous translation proved impossible. Thereupon counsel posed only short, simple questions to witnesses. Later the court approved written presentations prepared in advance.¹¹⁷

¹¹² Ibid., 136.

¹¹³ Ibid., 13.

¹¹⁴ Ibid., 18.

¹¹⁵ Each FEC (Far Eastern Commission) member sent an associate prosecutor to form the IPS.

¹¹⁶ Ibid., 14.

¹¹⁷ Horwitz, “Tokyo Trial,” 538-9; Australia, Department of External Affairs, *Current Notes on International Affairs*, Sydney, May 1948, 235; *New York Herald Tribune*, January 17, 1946, quoted in Piccigallo, *The Japanese on Trial*, 19.

Therefore, because of the prolongation of proceedings, traditional orthodox practices were altered, "severely limit[ing] the scope and effectiveness of cross-examination for both prosecution and defense."¹¹⁸

Prosecutors were also faced with the problem of rounding up defendants. Various charges, ranging from trivial to serious crimes against humanity overwhelmed their offices. The task of sorting through the truth, finding other witnesses to confirm accusations, authenticating the validity of documents, if they actually existed, and so on brought about the establishment of a criterion formulated by the Executive Committee of the IPS by which defendants were "selected." The decisive factors in choosing defendants were based on:

[O]ne, that they could be charged with crimes against peace; two, that they were "representative," both of various organs of the Japanese government (for example, the cabinet, general staff) and of different chronological "phases" in the "conspiracy"; three, that they had assumed positions of "principal" leadership and had had "primary" responsibility for violations charged; and four, that only "negligible" chances of their being acquitted existed.¹¹⁹

This last point is worth calling attention to as it was based on a SCAP policy which instructed Allied prosecutors to only pursue those defendants who they felt they had a solid or "in the bag" case against.

Lastly, the IPS was forced to relax the usual exacting policy of evidence. The IMTFE was forced to make adjustments considering the circumstances and

extended its scope beyond the boundaries set by the "technical rules of evidence," adopting and applying "to the greatest possible extent expeditious and non-technical procedure and admit(ing) any evidence which it deem(ed) to have probative value." In brief, it admitted any information which served in any way to prove or disprove the charges. This included any government document or report by the International Red

¹¹⁸ For examples of how cross-examination was limited, Piccigallo recommends seeing International Military Tribunal for the Far East, "Proceedings," (Tokyo, May 3, 1946-April 16, 1948), 886; 38,480; 38,487.

¹¹⁹ Horwitz, "Tokyo Trial," 495-6, quoted in Piccigallo, *The Japanese on Trial*, 15.

- Cross which "appeared" genuine to the tribunal; any affidavit, deposition or signed statement; any diary, letter or statement, sworn or unsworn; copies of the above; and hearsay.¹²⁰

Again based on a SCAP policy, measures were taken to simplify and thus avoid any delay in the proceedings. With the aim of reducing the number of "insubstantial" war crimes trials, i.e. "weak cases," thereby avoiding the ceaseless delay of more "substantial" trials, i.e. "stronger cases," the "...strict evidentiary rules applicable to municipal courts..."¹²¹ were abandoned.

To summarize, from the very outset language difficulties, interpretations of laws, location and validity of witnesses, defendants, and evidence prolonged trial proceedings, resulting in the IMTFE creating a policy to simplify and hasten events.

4. SCAP's Demands

The pace of the proceedings held much significance in SCAP's aims and objectives. "War crimes trials policy constituted an integral element of the Allied objective to demilitarize and democratize Japan and to restore stability to East Asia as soon as possible. Swift prosecution and disposition of trials, therefore, became essential."¹²² It was thought that "through expedition...might they ever hope to" draw a close to the trials "within a reasonable time, and thereupon dedicate themselves to concluding a workable, non-punitive peace treaty with Japan."¹²³ SCAP believed the earlier the trials concluded, the sooner they could begin their efforts of stabilizing and

¹²⁰ "IMTFE Charter," Section 3, Art. 13a-d, quoted in Piccigallo, *The Japanese on Trial*, 12.

¹²¹ *Ibid.*, 13.

¹²² *Ibid.*, 15. For examples, Piccigallo recommends seeing Potsdam Declaration, article 10; Australia, Department of External Affairs, *Current Notes on International Affairs* 17, no. 1, Sydney, January 1946, 19, 23; Vol. 17, no. 3, March 1946, 134, 136. On the Allied emphasis on expediting war crimes trials operations see, *New York Times*, November 16; December 1, 1945; *New York Herald Tribune*, November 8, 24, 1945, quoted in Piccigallo, *The Japanese on Trial*, 220, n24.

¹²³ Piccigallo, *The Japanese on Trial*, 95.

rebuilding Japan. These demands, as will be discussed later, greatly affected the outcomes of many of the trials held by the Australian government.

5. The Tokyo War Crimes Trial

The IPS handed down an indictment against twenty-eight Japanese on April 29, 1946 at the Tokyo War Crimes Trial. The list of those prosecuted "...included former officials: four prime ministers, four foreign ministers, five war minister, two navy ministers, a lord keeper of the privy seal, and four ambassadors, among others."¹²⁴ However not one person involved with the CBW units was prosecuted. Surprisingly, even after U.S. Occupation forces later captured some of the leaders of these units in 1947, they continued to avoid appearance in court. The subject was completely circumvented in the trial proceedings. The following is taken directly from the transcripts of the trial proceedings and demonstrates the extent to which the subject was mentioned.

"Particulars Regarding Other Atrocities.["]

"The enemy's TAMA Detachment carried off their civilian captives to the medical laboratory, where the reactions to poisonous serums were tested. This detachment was on of the most secret organizations. The number of persons slaughtered by this detachment cannot be ascertained."¹²⁵

THE PRESIDENT: Are you going to give us any further evidence of these alleged laboratory tests for reactions to poisonous serums? That is something entirely new, we haven't heard before. Are you going to leave it at that?"¹²⁶

MR. SUTTON: We do not at this time anticipate introducing additional evidence on that subject.¹²⁷

MR. BROOKS: If the tribunal please, I think that on this document, this reference to the reaction to poisonous serums tested, we would like to inquire into prosecution if this does not consist of a series of vaccinations of these people. It would go to the weight to place upon this report, which shows on pate 2 that it was made years

¹²⁴ Ibid., 14.

¹²⁵ R. John Pritchard and Sonia Magbanua Zaide, *The Tokyo War Crimes Trial: Volume 2, Transcript of the Proceedings in Open Session: Pages 2,098-4,679*, (New York; Garland Publishing Inc: 1981) lines 5-11, 4,546.

¹²⁶ Ibid., lines 21-25, 4,546.

¹²⁷ Ibid., lines 1-3, 4,547.

afterwards by an investigation committee requested by the prosecution. It shows here on the 17 November 1945, 1400, the first meeting was held, and if they didn't know the difference between vaccination and the statement as set out in here, I think it would be very material to this Court in considering the weight of this evidence, which is a summary of testimony which has already been given.¹²⁸

THE PRESIDENT: Mr. Levin.

MR. LEVIN: Mr. President, I believe the defense ought to have some protection against the use of a document of this character. There has been a great deal of evidence, practically uncontradicted in some respects, except as I indicated one time in Chambers that the defense would offer some testimony in relation to the Rape of Nanking and the atrocities which had been committed there. It seems to us that the Court has gone to great length to help the prosecution present its case in permitting the use of affidavits and permitting the use of summaries.

THE PRESIDENT: You must not criticise the Tribunal, Mr. Levin.

MR. LEVIN: I am not. Mr. President, I am not in the least intending to criticise the Tribunal in any way. I simply mean that the Court has permitted the prosecution to proceed in the manner which it has. What I am trying to say largely is this, that the prosecution, having the right to submit affidavits, having the right to submit summaries, and having the right to present the case in the manner in which the Tribunal has permitted it to present it, it ought not to have in these documents evidence of the character which is in this exhibit. The Court has indicated that at some time the evidence becomes cumulative, and if that situation develops the Court would act, and it seems to me that with the evidence that is already in that this evidence is cumulative, and the defense, in view of the fact that the affidavits are permitted to be read in, has no manner or way of protecting itself with reference to improper portions of those affidavits.

THE PRESIDENT: Well, now, you are entitled to be there only to object to a certain bit of evidence, and the evidence I take you to be objecting to is that referring to tests on Chinese apparently [sic] with poisonous materials. Subject to what my colleagues think, that appears to me to be a mere assertion [sic] unsupported by any evidence.¹²⁹

THE PRESIDENT: The Judges will be just as vigilant as the defense to see that evidence which is indefinite or vague, or sweeping assertions which are not supported by evidence, are rejected. You need no protection against the judges.¹³⁰

THE PRESIDENT: Well, in the result the statement to which the defense objects, namely that there were tests with poisonous materials on Chinese, is rejected as evidence.¹³¹

¹²⁸ Ibid., lines 12-25, 4,548.

¹²⁹ Ibid., lines 1-25, 4,549; lines 1-15, 4,550.

¹³⁰ Ibid., lines 10-14, 4,551.

¹³¹ Ibid., lines 23-25, 4,551; line 1, 4,552.

6. U.S. Influence over Other War Crimes Trials

There were hundreds of Allied “lesser” trials concerning thousands of alleged Japanese war criminals conducted even prior to the Tokyo Trial’s opening session and continued well beyond the IMTFE’s termination.¹³² These trials were carried out throughout Asia, Australia, and Russia. Collectively, these trials consumed more time and effort than the IMTFE. In contrast, they did not receive the media attention as the aforementioned. They did however receive equal attention from the United States. American influence over these trials will now be discussed.

A. Australia

The fight against the Japanese was “closer to home” for the Australians than for the British or Americans. Australia suffered greatly at the hands of the Japanese. Therefore, in the minds of the Australians the ultimate Japanese war criminal was Emperor Hirohito. “Calls for ‘Hirohito’s scalp’ sprang from all over Australia and grew in intensity.”¹³³ However, the Australians gave up their quest to try the emperor at the behest of SCAP for reasons discussed later in this paper.

Additionally, Australian POWs were also among those used in Japanese BW experiments. Evidence was given about these experiments in a deposition during the Tokyo War Crimes Tribunal.¹³⁴ Diaries and other testimonies of former POWs were also provided to the Australian authorities. Oddly, a thorough investigation by the War Crimes

¹³² The last of these trials concluded in 1951. The IMTFE proceedings concluded in 1948. Piccigallo, *The Japanese on Trial*, 32.

¹³³ *New York Herald Tribune*, January 17, 1946; Other recommended examples are, Evatt, *Australia in World Affairs*, 141; U.S. Department of State, *Foreign Relations of the United States, 1946* (Washington, D.C., 1971), 384, 386-7, quoted in Piccigallo, *The Japanese on Trial*, 124.

¹³⁴ These activities were never linked to Ishii or Unit 731, however. For details on Australian Lieutenant John van Nooten’s testimony regarding these allegations see “The International Military Tribunals of the Far East: Record of Proceedings,” (Tokyo, 1946), Vol. 48, 13961-14005; Tanaka, *Hidden Horrors*, 157-8.

Section of the Australian military was never conducted nor was any true attempt made to apprehend those responsible for the experiments. An example of the extent to which their investigations went is as follows:

In order to sort out the conflicting accounts and to confirm the probable falsehood of the suspect ones, the War Crimes Section resorted to using a lie detector. However, the apparatus had no effect on the stories of the Kempeitai members...[who] being well versed in the methods of interrogation and torture themselves, might be expected to stand up fairly well under interrogation and be able to persist with a false story.¹³⁵

In the course of investigations, the War Crimes Section came across a man who witnessed the massacre of POWs in an area where evidence of BW activities was found.

It was determined that the...area had been guarded by ...[a] naval garrison and not by the 8th Army or Kempeitai. The War Crimes Section interrogated the former commander of the unit...as well as other junior members of it... [The captain] admitted that he had ordered the executions...[He] initially claimed that the orders for the executions had come from the intelligence officer of Southeast Fleet Headquarters. The Australian War Crimes Section determined that this claim was a lie and that the orders had in fact come from [the captain] himself without any communications with his superiors.¹³⁶

In this particular circumstance, undoubtedly under the direction of SCAP, the Australian War Crimes Section ended their inquiries into the investigation of the suspect at this specific point in order to avoid further investigation "up the chain of command." The Australians undeniably felt that further pursuit of the investigation would ultimately lead to the accountability of the emperor, which would completely upset SCAP's occupational plans for Japan.

Australia was to reach another stalemate. The war had been ended for several years, and the world, having already exhaustingly fully engrossed themselves in the

¹³⁵ Tanaka, *Hidden Horrors*, 156.

¹³⁶ Ibid. This particular incident refers to medical procedures performed on Truk Island on Australian POWs. This U.S. handling of this case is covered later under the subheading "Other War Crimes Trials."

details of the Nuremberg Trials, had shown a disinterest in (compared to the Nuremberg Trials) and became tired of the seemingly long, ceaseless Eastern war crimes trials. The outcome resulted in many of the Allied nations becoming "impatient" and desiring a quick and forthwith conclusion to the trials.

Eventually, via SCAP, London authorities, and the FEC a strong "suggestion" was made to Australia as well as other Allied nations to bring their war crimes operations to a conclusion "before the start of 1950."¹³⁷ Domestically as well as internationally, this directive would prove to spawn more argument and animosity than any war crimes case conducted during the Australian tribunal.

The details are as follows: Australian officials "promised" General MacArthur, in 1948, that they would complete all trials by September 1949. With the closing down of the war crimes court in Hong Kong [which was being used by the Australians] in December 1948, however, Australians lacked a suitable location in which to hold the remaining trials. MacArthur "absolutely refused" to allow them to be conducted in Hong Kong or Japan, even after "repeated entreaties." Government spokespersons claimed lack of "proper accommodations and other essentials" needed for the trials.¹³⁸

The Australians strongly desired the prosecution of "all" culpable Japanese and were concerned that rushing through the hearings and prematurely ending them would allow many of the alleged guilty criminals go unpunished.

At long last, a compromise was reached between Canberra and SCAP. The Australian government broke down and agreed to only proceed with prosecutions of Japanese who were accused of crimes that carried the penalty of death if convicted.

B. New Zealand

New Zealand suffered heavy losses during the Pacific war as well resulting in their animosity toward Japanese war criminals rivaling that of Australia. Therefore, their

¹³⁷ Piccigallo, *The Japanese on Trial*, 136.

¹³⁸ *Ibid.*, 136-7.

failure to vehemently pursue prosecution of even “minor” war criminals was surprising and deserves examination.

Author Philip R. Piccigallo, who wrote an extensive account of the Japanese war crimes trials attributes New Zealand’s inactivity to these three factors:

First, New Zealanders, like other Allied populations, experienced a growing impatience by 1947 with the length and immensity of the war crimes operation. Second, as with Australia, security matters overwhelmingly dominated Wellington’s interests in the early postwar years. Third, and in response to the preceding factor, New Zealand willingly accepted unquestioned American predominance in the Pacific, as well as American, British and Australian supervision over Eastern war crimes trials.¹³⁹

C. China

China and its people suffered the most casualties and cruelest treatment under Japan’s BW program. Unlike the United States or Britain, China experienced Japanese war crimes on their own territory.

...the number of atrocities reported and suspects named reached staggering proportions. On March 3, 1946, the inspection department of the Shanghai district Court announced that it had compiled 11,889 cases of war crimes. Nine days later reports disclosed that the number of cases of Japanese atrocities filed in Shanghai alone had ballooned to over 30,000.¹⁴⁰

The Chinese had the right more than any other country to demand a trial of the BW war criminals yet surprisingly did not for several reasons. Given China’s terrible suffering, the Chinese government did express from early on its unyielding resolve to wholeheartedly help in the prosecution of Japanese war criminals. However, due to

¹³⁹ “The IMTFE, said one critic, in process over two years, “had become a complete farce,” New Zealand, Legislative Council and House of Representatives, *Parliamentary Debates* 278, September 26, 1947, (Wellington: n.p., 1948), 649, quoted in Piccigallo, *The Japanese on Trial*, 248, n.109; Samuel Leatham, *New Zealand’s Interests and Policies in the Far East*, (Wellington: n.p., 1950), 3-7, 11-12, 21, in Piccigallo, *The Japanese on Trial*, 248, n.110; “New Zealanders, like Australians, often heatedly disputed certain aspects of U.S. Pacific policy—its plans to revive the Japanese economy, for one. But, in general, they found a sense of security in the American presence in the Far East.” Frederick S. Dunn, *Peacemaking and the Settlement with Japan*, (Princeton, NJ: n.p., 1963), 81-2, 109-10, 115,128, 150-1, 156, in Piccigallo, *The Japanese on Trial*, 248, n. 111.

China's post war condition near countrywide chaos and dismay, they were unable to act on their resolution.

Curiously, [Chiang Kai Shek's]...Kuomintang government showed little interest in Ishii or his confederates. They had sufficient data on hand to try some of their prisoners known to have engaged in BW activities. Yet, (Lt. General Masaji) Kitano "escaped" their clutches in Shanghai. Other leading BW specialists managed to "elude" capture, and returned safely to Japan. There is currently no evidence available that suggests any effort on the part of Chiang Kai Shek's people either to interrogate the BW principals, or to charge them with any crime. The Chinese Kuomintang judge at the Tokyo War Crimes Tribunal never raised the BW issue, even though he was known as a hardliner when it came to Japanese war crimes.¹⁴¹

More striking, perhaps, is the posture of Mao Zedong and the Chinese Communist Party. Hundreds if not thousands of communist guerillas provided Ishii, (Lt. General Yujiro) Wakamatsu and Kitano with the human material employed in their BW experiments. Many communist sympathizers were also sent to the death factories, where they were subjected to pathogenic experiments and killed subsequently. Mao and his followers were aware of what had taken place...¹⁴²

The United States was granted "temporary authority" to perform war crimes trials in China by Chiang Kai-shek's Nationalist Government for several reasons.

First,... Washington would have it no other way. The United States position, revealed flatly during the latter stages of the war, held that "in the absence of any agreement to the contrary," an invitation to a foreign military force to enter the country and repel an enemy "includes" the right and duty to conduct war crimes trials operations. Chiang really had no choice but to accept and work within this resolutely stated American policy decision if he wished to remain in Washington's good favor after the war. Second, the "close and friendly Sino-American relationship" which had developed during the war years required such cooperation. Third, Chinese authorities clearly recognized the advantages of United States assistance...." As one Dr. Wang Shih-chieh, minister for foreign affairs, put it, "Allied justice could more effectively be served" by active American participation.¹⁴³

Chinese officials struggled with a list of problems, resulting in their dependence upon the United States for assistance in putting cases together. Short on lodging and

¹⁴⁰ *China Press*, March 12, 1946, in Piccigallo, *The Japanese on Trial*, 162.

¹⁴¹ Brackman, *The Other Nuremberg*, 52.

¹⁴² Harris, *Factories of Death*, 225.

¹⁴³ U.S. Department of the Army, Report of the Judge Advocate, United States Forces, China Theater, United States Army Forces China, Nanking Headquarters Command and Advisory Group China,

temporary housing¹⁴⁴ for staff and witnesses, and the ostensibly limitless demands of inquiries and preparation inundated the Chinese offices causing several delays and postponements. Chinese, American and also British investigation teams worked closely coordinating and preparing for these trials carried out on Chinese soil.

First and foremost, the Chinese authorities lacked a doctrine to follow in assembling their cases. Under the supervision of American officials, it was decided that China would employ international law as their "principal source"¹⁴⁵ of doctrine.

Additionally, the Chinese authorities depended heavily on the United States, namely SCAP, for "...the extradition of suspects or witnesses from Japan for trials in China."¹⁴⁶

In all, "...a total of thirteen military tribunals in thirteen districts, including Canton, Hankow, Northeast Hsueh, Chuchow (Chekiang), Honan, Hunan, Shanshi, Hopei, Suiyan, and Taiwan." were conducted,¹⁴⁷ and murder was the most frequently charged indictment there.

And while precise figures are unavailable, it would appear accurate to conclude that, regarding this particular offense, Chinese tribunals convicted considerably more Japanese than they acquitted. Death sentences were common.¹⁴⁸

January 1, 1945 to June 10, 1947, 22, exhibits nos. 17-1, 17-2; 107-109, quoted in Piccigallo, *The Japanese on Trial*, 68-9.

¹⁴⁴ Sometimes witnesses were brought from across the country and asked to stay for long periods of time before they had the chance to testify.

¹⁴⁵ *Ibid.*, 159.

¹⁴⁶ U.S. Department of the Army, *Report of the Judge Advocate*, 24, quoted in Piccigallo, *The Japanese on Trial*, 69.

¹⁴⁷ *Ibid.*, 162.

¹⁴⁸ Also, *China Press*, April 18, May 24, 1946; January 7, February 3, August 15, September 23, December 11, 17, 19, 1947; January 27, May 18, 28, June 8, September 2, 1948; *Malay Mail*, July 26, 1949, recommended by Piccigallo.

D. Russia

Having entered the Pacific war on August 9, 1945, the Soviet Union was relegated to assume a relatively minor role in the handling of Japanese war crimes trials and "Allied policy regarding the surrender and postwar settlement of Japan." Like everyone else, the Soviets had to follow the United States' lead in regards to the organizing and prosecuting of major Japanese war criminals. As mentioned in another section of this paper, Russia not only signed the Potsdam Declaration of July 26, 1945, but also, along with the leaders of the United States, Britain and the Republic of China, jointly issued the document of the "Allies' offer of surrender terms to Japan."¹⁴⁹ Later, again with their Allied counterparts, the Soviets accepted and signed, the Instrument of Surrender on September 2, 1945.¹⁵⁰

Nevertheless the Soviets were distrustful of the American's motives in regards to postwar Japan. This was due to the fact that the United States had not disassembled the Japanese armed forces immediately upon surrender. Such sentiment was undoubtedly the beginning of the rising Russo-American Cold War tension.

The Soviets also had grievances regarding the handling of the war crimes trials with complaints such as, "the occupation authorities permitted the Japanese reactionaries to develop an open campaign in defense of these criminals"¹⁵¹ and that

"...carelessness" on the part of occupation authorities, went the allegations, had resulted in the escape of some guilty Japanese and the destruction of much evidentiary material...the list of major war criminals slated for trial at the IMTFE was "far from complete": it conspicuously and unjustifiably excluded Japan's leading industrialists, the *zaibatsu*. These "greedy capitalists" had worked hand in hand with Japanese militarists and had furnished them the means to effect their imperialistic plans. Absent, too, was Emperor Hirohito.

¹⁴⁹ Piccigallo, *The Japanese on Trial*, 144.

¹⁵⁰ Ibid.

¹⁵¹ Ibid. 146.

Essentially, the Soviets did not condone the United States' occupation policy in Japan, or agree with those who devised, oversaw and implemented it.¹⁵²

In short, the Russians perceived—or so they said—IMTFE as an American attempt to cover up the guilt of those Japanese whom they believed to be most responsible for the war—namely, the emperor, major industrialists and capitalists, and militarists.¹⁵³

As a result, the Soviets took it upon themselves to conduct their own investigations, preparations, and trials at home—out from under the influence and intimidation of the United States.

During the conducting of their own tribunal, the Khabarovsk Trials, the Soviets “...completely disregarded FEC ‘recommendations’ that all minor Eastern war crimes trials be terminated by September 30, 1949...Instead they instituted war crimes trials proceedings at Khabarovsk, in southeastern Siberia, from December 25-30 of that year.”¹⁵⁴

At Khabarovsk, twelve former members of the Japanese armed forces stood charged with “manufacturing and employing bacteriological weapons. I.e., with a crime punishable under Article 1 of the Decree of the Presidium of the Supreme Soviet of the U.S.S.R. of April 19, 1943.”¹⁵⁵

Members of prestigious institutions such as the Academy of Medical Sciences of the USSR, Department of Microbiology in the Khabarovsk Medical Institute, et cetera comprised a commission which was responsible for submitting “[a]ll findings on matters of bacteriology and medicine” in regards to the former Japanese armed forces.¹⁵⁶ Through

¹⁵² Ibid., 147.

¹⁵³ Ibid., 148.

¹⁵⁴ Ibid., 150.

¹⁵⁵ USSR, *Materials on the Trial of Former Servicemen of the Japanese Army Charged with Manufacturing and Employing Bacteriological Weapons* (Moscow, 1950), indictment, 7, in Piccigallo, *The Japanese on Trial*, 150-1.

¹⁵⁶ Ibid., 151.

their findings, Soviet attorneys frequently accused the Japanese of planning to use BW as “part of a general conspiracy of aggression against the peaceful nations.”¹⁵⁷

Moreover, read [an] indictment, “acting upon secret instructions from Emperor Hirohito, the Japanese General Staff and Ministry for War already in 1935 and 1936 formed in Manchuria two top-secret units for preparing and conducting bacteriological warfare.” In subsequent years, continued the allegations, Japanese built special laboratories and “carried on systematic biological research.” They intended thereby to ascertain “which types of germs” were most pernicious and lethal, and best suited to “breeding on a mass scale.” Then the Japanese planned “to exterminate large masses of people and cause economic damage by infecting cattle and crops....” Finally, the Soviets charged, in their “criminal” bacteriological experiments, the Japanese “monsters” conducted “inhuman” tests on living people.¹⁵⁸

Soviet “medicolegal experts” testified in total support of these allegations. They revealed the Japanese military’s establishment of three germ warfare units in Manchuria “code-named 731, 100 and 1644”. Examples of the Soviet experts’ elaborations on Japanese BW activities are as follows:

They “devised methods for mass breeding of fleas, for their subsequent infection with plague and utilization for war purposes”; for producing “bacterial aerial bombs, artillery shells and contrivances for spreading bacteria from aircraft”; for contaminating food, water sources, fodder and soil; and for “infecting cattle and agricultural plants.”¹⁵⁹

The Soviet medical experts confidently concluded without any sense of doubt that the Japanese did in fact perform germ warfare experiments on living human beings as well as carry out germ warfare “in certain districts in Central China in 1940, 1941 and 1942.”¹⁶⁰

Finally, from evidence substantiated through the witnesses and the accused Japanese war criminals’ testimonies, the Soviet medical experts, and secured Japanese

¹⁵⁷ USSR, *Materials*, 276, 405, 411-2, 415, 447, 466, quoted in Piccigallo, *The Japanese on Trial*, 153.

¹⁵⁸ USSR, *Materials*, 7-12, 15-22; 426, 437, quoted in Piccigallo, *The Japanese on Trial*, 151-2.

¹⁵⁹ USSR, *Materials*, 396-404, Piccigallo, *The Japanese on Trial*, 152.

¹⁶⁰ Ibid.

documents, the Soviet prosecutors believed they had proven without a doubt, the Japanese preparation of BW for aggressive use. The fact that even with this abundance of apparent evidence, similar revelations never surfaced at the IMTFE, confirmed their suspicions of an American backed conspiracy.¹⁶¹ As one Soviet attorney accusingly stated, "...the real initiators and organizers of bacteriological warfare flourish under the wing of U.S. General MacArthur."¹⁶² It was a widely held belief by the Soviets that MacArthur, i.e. the United States, was hiding and protecting the former BW detachment members and their inhumanely obtained information in order to use them in future wars. The Americans' denial of ever encountering any germ warfare related evidence during the entire IMTFE further supported this conviction.¹⁶³

To the world as well as at home, the United States maintained damage control by claiming these allegations were nothing but Communist propaganda. Obviously, until post Soviet break-up, they were indeed successful.

Interestingly enough, all of those accused of BW crimes at the Khabarovsk trials pleaded guilty,¹⁶⁴ and consequently were found guilty as charged. Curiously enough, for all of the Soviet claimed "horrendous, hideous and monstrous" acts committed by these criminals, they received relatively light sentences.

...four received twenty-five years' "confinement in a labour [sic] correction camp"; two received twenty years' confinement; and the rest got eighteen, fifteen, twelve, ten, three and two years, respectively. Considering the enormity and wickedness of the accused's wrongdoing, as depicted by Soviet prosecutors, one might have expected harsher penalties. Of eight Russians convicted of "spying" for the Japanese in 1946, for example, five were executed.¹⁶⁵

¹⁶¹ USSR, *Materials*, 220, 311, 406-8, 443, Piccigallo, *The Japanese on Trial*, 153.

¹⁶² M. Raginsky, "Monstrous Atrocities of the Japanese Imperialists," *New Times* 2 (January 8, 1950): 3-7, quoted in Piccigallo, *The Japanese on Trial*, 154-5.

¹⁶³ Ibid.

¹⁶⁴ For descriptions of the Japanese suspects' demeanor on the stand, see *ibid.*

¹⁶⁵ USSR, *Materials*, 396-404, quoted in Piccigallo, *The Japanese on Trial*, 154.

E. Other War Crimes Trials

The Yokohama war crimes trials saw the disclosure of wartime activities previously not mentioned in any of the other trials. On March 11, 1948, thirty people were brought up on charges which included "...vivisection, wrongful removal of body parts and cannibalism..."¹⁶⁶ Many of these allegations charged that these highly trained Japanese medical and scientific staff performed these offenses on American POWs, often resulting in death. Together, these servicemen and faculty of the Medical School of Kyushu Imperial University were accused of

...acting jointly and in pursuance of a common intent, did, in conjunction with others...willfully and unlawfully kill approximately 8 of 12 American POWs...by vivisectioning them, mutilating and dissecting and removing parts from and otherwise desecrating the bodies of said prisoners.¹⁶⁷

Additionally, in April 1948, the first female war crimes defendant was officially tried. Shigeko Tsutsui, a former army nurse, was charged with participating in "merciless medical experiments' upon captured American flyers in 1945."¹⁶⁸

These charges were allowed in trial due to the fact that all of those convicted on these charges were not associated with Unit 731 and the like. It was determined that they were all ordinary hospital staff and not in any way under the direction of Ishii and company. In particular, they were never involved in CBW experimentation. The "operations," it was explained, were conducted as an act of revenge for the Doolittle Raids.¹⁶⁹ In the end, of the 30 defendants, 23 were found guilty, five of those were

¹⁶⁶ Thomas Easton, "Japan admits dissecting WWII POWs," *Baltimore Sun*, May 28, 1995.

¹⁶⁷ Piccigallo, *The Japanese on Trial*, 88-9.

¹⁶⁸ *Stars and Stripes* (Tokyo), March 25, 1946; February 18, 1948, quoted in Piccigallo, *The Japanese on Trial*, 89.

¹⁶⁹ Tanaka, *Hidden Horrors*, 241, n. 63.

sentenced to death, four to life imprisonment, and the other fourteen were sentenced to shorter terms.¹⁷⁰

As in Tokyo and Yokohama, similar war crimes trials against Japanese were held in Hong Kong, Singapore, Borneo and other formerly Japanese occupied territories. Those accused "...were indicted for cruelty towards local populations and prisoners of war..."¹⁷¹ Although these trials combined saw the execution of over 900 individuals, none were associated with Ishii or CBW experimentation or research.

In conclusion, the combination of the Allied nations'¹⁷² lack of interest in the Eastern trials after enduring the Nuremburg trials, and SCAP's desire for smooth occupation operations in Japan, i.e. a peace treaty with Japan, resulted in the FEC (Far Eastern Commission) "recommending" the quick conclusion of all Eastern war crimes trials by September 1949.¹⁷³

America's role in the Eastern war crimes trials ran parallel with their position as the sole leader of Occupied Japan. Although the United States fastidiously tried more Japanese than any other nation, they purposely omitted and prohibited the prosecution of anyone associated with Unit 731 or its constituents. The United States, in an effort to ease occupations operations, exercised considerable sway over the Allies' trials by extending this standard to their war crimes policies. Prosecutors representing various Allied nations allowed themselves to be silenced by the United States resulting in Ishii and his associates' immunity from prosecution. The British Government was consenting in the hopes of gaining information from the unit members via the United States (this will

¹⁷⁰ Easton, "Japan admits."

¹⁷¹ Calvocoressi, Wint, and Pritchard, *Total War*, 1215.

¹⁷² Excluding the Soviet Union.

be discussed later); the Chinese who had firsthand knowledge about the use of BW by the Japanese, “must have lived in the hope of gaining some kind of a quid pro quo for their silence” during trials; the French and the Dutch, who in their territories experienced BW human experimentation as well, remained quiet on the subject; and finally, even the Russians, who at first vehemently insisted that the matter be raised during the Tokyo Trials, allowed themselves to be silenced.¹⁷⁴

The following explains the United States’ incentives behind these motivations.

¹⁷³ Far Eastern Commission, “Third Report by the Secretary General, December 24, 1948-June 30, 1950,” Publication 3945 (Washington, D.C., 1950), 4-5, quoted in Piccigallo, *The Japanese on Trial*, 47.

¹⁷⁴ Calvocoressi, Wint, and Pritchard, *Total War*, 1205-6.

IV. The United States, the CBW War Criminals, and the Trials

1. Investigations into Japanese CBW

Japan surrendered to the Allied forces on September 2, 1945. Shortly after General MacArthur undertook his SCAP role, he ordered an intense investigation into the allegations of CBW testing performed by the Japanese during the war. SCAP Headquarters took haste in apprehending suspects of war crimes with commands to the Japanese government “to furnish complete information” about POW camp locations; ordered the identification of Allied POWs and “all Japanese military and civilian personnel” and any and all other pertinent information.¹⁷⁵

During these first months of Japan’s occupation, investigators were busy looking for leads, interrogating suspects, or finding any information relating to Japanese war crimes or war criminals. The occupation released many disaffected Japanese who were imprisoned during the war for their political beliefs and now that Japan was democratic, there were many leftists, Communists, conservatives, etc. with scores to settle or grudges to bear. Many would see this as their opportunity to seek their revenge on their oppressors. “Allegations of alleged war crimes committed by literally thousands of Japanese threatened to over whelm those responsible for determining the validity of the accusations.”¹⁷⁶ Unfortunately, many were signed anonymously, which authorities later used as a reason to discredit the allegations. However, there were many accusations that too accurately corroborated with previously compiled information to be considered untrue.

¹⁷⁵SCAP, “Trials of Class ‘B’ and ‘C’ War Criminals,” 46-9, 67-8, quoted in Piccigallo, *The Japanese on Trial*, 45.

¹⁷⁶Harris, *Factories of Death*, 174.

To further investigate the allegations, American intelligence officers were sent to Yokohama and were assigned the duty of finding out the activities of Unit 731 in particular. Lieutenant-Colonel Murray Sanders, a microbiologist from Camp Detrick, was appointed the principal investigator.

Initially, Japanese officials, military leaders, civilian scientists, and former Unit 731 figures feigned ignorance about the existence of a BW program to Sanders and his co-investigators. Additionally, Sanders was approached by a translator named Lieutenant Colonel Naito Ryoichi, who he eventually used as an informant. Unfortunately, unbeknownst to Sanders, Naito was a protégé of Ishii, who regularly manipulated translations to his benefit.

Naito sat in on many of Sanders' interviews, leading the questions and the answers in the direction that he, not Sanders, wished the investigation to take. He plied Sanders with selective data, giving him on 4 October 1945 a twelve-page handwritten statement that was both self-serving and protective of his superiors. Naito prevaricated if he felt it necessary. When asked, for example, whether prisoners had ever been used as experimental guinea pigs, "The informant (Naito) 'vows' that this was never done." Sanders accepted Naito's views almost completely.¹⁷⁷

Eventually, from information and comments taken during the interviews with Naito involved, Sanders concluded in an official report that Japanese BW research was purely the deed of one "black sheep," General Ishii Shiro of the Kwantung Army.

Unsatisfied with this report, a second Fort Detrick BW researcher, Lieutenant Colonel Arvo T. Thompson, was sent to follow up on Sanders' findings. Thompson was able to gain more, detailed information than Sanders¹⁷⁸ and as a result, the authorities were beginning to see a pattern emerging in the names of people, places, events, and

¹⁷⁷ Lt. Colonel Howard I. Cole, "Summary of Information from a Report by a Member of the Staff of the Army Medical College," n.d. (mid-October 1945), RG 112, Entry 295A, Box 8, 33, No. 1, National Archives, quoted in Harris, *Factories of Death*, 135-6.

¹⁷⁸ Possibly due to the fact Naito was not involved in any of his interviews or investigations.

dates associated with the BW allegations. The names Lt. General Wakamatsu Yujiro, Lt. General Kitano Masaji, and Lt. General Ishii Shiro in particular were frequently mentioned.

Wakamatsu, the former head of unit 100, was exposed by too many of his former subordinates for Intelligence to ignore. His "...underlings cited extensive glanders experiments with Chinese prisoners...(another) former civilian employee in Unit 100 [charged] that many POWs were subjected to a series of research trials, and then were carved up at an out door dissecting facility in Changchun."¹⁷⁹

Kitano's own testimonies provided the most information at first regarding Japan's BW activities. He spoke openly about his achievements in developing various vaccines and serums but never mentioned human experiments.

...one Imaji Setsu forwarded a communication to Intelligence claiming that Ishii was secretly engaged in BW research. Imaji revealed Ishii's earlier alias of Togo Hajime, and alleged that the BW researchers had committed "atrocious acts" against humans. He insisted that Ishii and others had employed humans "instead of animals for their research on bacteria."¹⁸⁰

Another informant told authorities that Ishii "was in charge of experiments conducted on human subjects in Manchuria during the war...in connection with BW."¹⁸¹

In January of 1946, General Ishii was ordered arrested—although never brought to a jail cell. He was allowed to live under house arrest. It is believed he avoided the jail cell by feigning illness. In actuality, it is said he feared leaving his own home as a result of death threats. A more plausible explanation may be the Americans' fear of the Soviets marking him as an intelligence target.

After Ishii's arrest and interrogation, Thompson reported that

¹⁷⁹ Report by John G. Donnell, 3 December 1946, RG 331, Box 1434, 20, case 330, The National Archives., quoted in Harris, *Factories of Death*, 184.

¹⁸⁰ Ibid., 175-6.

¹⁸¹ Ibid., 176.

- ✓ [w]hile Ishii maintained that no official directive existed for the prosecution of this activity and that it was conducted as a phase of military preventive medicine, it is evident from the progress that was made that BW research and development in all its phases was conducted on a large scale, and was officially sanctioned and supported by the highest military authority.¹⁸²

This statement weighed heavily on SCAP's occupation plans. "The highest military authority" was equated with Emperor Hirohito, and as will be uncovered later, the emperor's involvement in war crimes trials was not desired by the United States.

By March 1946, Army Military Intelligence reports had "...identified five BW principals and three BW research locations."¹⁸³ Additionally, investigators located ex-Unit 731 members, and through interviews extracted information regarding the persons knowledgeable and responsible for the program and experiments. The amalgam of facts and accounts enabled the United States to piece together a detailed summary of the Japanese BW program.

With the amount of findings on the Japanese CBW programs increasing, one would assume the Allies were busy building a strong Class "A" war crimes case. However, as one IPS (International Prosecution Section) assistant was to discover, these findings would not only be withheld from the proceedings, but covered up as well. His assignment was to fly to China to further investigate and gather more evidence on BW, and other alleged war crimes activities. He found significant material there on BW, and reported his findings to the head of the prosecution team. Curiously, he was reassigned to Washington shortly after submitting his findings and recommendations. As a result, the war crimes investigators failed to pursue his leads, and the IPS head did not initiate criminal proceedings against Ishii, Kitano, Wakamatsu and others albeit their activities

¹⁸² Ibid., 137.

should have branded them as high-level Class “A” war criminals. This could be taken as the beginning of America’s failure to try the participants of the Japanese BW program.

2. The Conflicts within the U.S. Authorities

The military and civilian microbiologists of Camp Detrick who performed the inquiries and interrogations were not interested in the criminality of Ishii and others’ activities but of their results. Back in the United States, their colleagues were eager to ascertain what advances the Japanese had made in regards to CBW. The Camp Detrick scientists’ fervent desire to learn whether the Japanese experimentation on humans corroborated with their research on animals would prove to be *the*¹⁸⁴ foundation of the conflict between scientists, military personnel, SCAP, and prosecutors—culminating in the exculpation of Japanese CBW unit members.

A. The Scientists

The American scientific BW team desired to become a forerunner in CBW technology. So much so in fact, that they were willing to share their information with the British.

This was a standing measure of their [Britain’s and America’s] technical collaboration, but there were practical benefits to both sides. Porton Down’s scientists were regarded as the cut above their American counterparts: the Americans had systematically assembled a vast amount of information from their Intelligence during the latter stages of the war and during their early days in Japan. Meanwhile, in Singapore, the Central Pathology Laboratory of Lord Mountbatten’s forces had occupied the only Japanese BW laboratory now known to have remained operational following the surrender of Japan: records concerning what happened next are unavailable.¹⁸⁵

¹⁸³ War Department, Military Intelligence Division, “Biological Warfare Activities & Capabilities of Foreign Nations,” March 30, 1946, Annex H, 2,3,5,6, quoted in Harris, *Factories of Death*, 137.

¹⁸⁴ Emphasis added.

¹⁸⁵ Calvocoressi, Wint, and Pritchard, *Total War*, 1205-6.

Again, for reasons of advancing their CBW knowledge and capabilities, the U.S. scientists became anxious to gain the Japanese BW experts' knowledge. Ethical issues engaged a secondary role to the U.S.'s desire to be unsurpassed in the field of BW. To the chagrin of the Camp Detrick scientists, they

were frustrated in three areas of their studies that were deemed vital. 1. They had to theorize about man's susceptibility to certain toxic agents based on findings from experiments with animals.¹⁸⁶ In their opinion, it would be far more preferable in perfecting BW agents if scientists could rely on human experiments data. 2. The researchers lacked sufficient information on BW delivery systems. One leader in the field confessed that "We had no first-hand knowledge on how biological warfare agents might be disseminated... (We had) no background other than conjecture."¹⁸⁷ 3. Finally, American BW testing in the field was still quite limited and unsatisfactory, yet "The absolute necessity for adequate field tests of the various possible means of dissemination was recognized from the beginning."¹⁸⁸

American scientists were excited that the Occupation authorities had the mastermind behind the Japanese CBW research program, General Ishii Shiro, in their custody. So much so, they made a list of seventy-five BW related questions based on the aforementioned problem areas to ask the Japanese.¹⁸⁹

American scientists' desire to appropriate his findings at any cost was twofold. 1. They wanted to compare the comprehensiveness of his research against their own. 2. They wanted to compare his results on experimentation on humans with theirs on animals.

Once more, Camp Detrick sent yet another researcher to Japan to look into the large amounts of accounts of BW activity that occurred in Manchuria. Following in

¹⁸⁶ Special Consultant on Biological Warfare, "Activities of the United States in the Field of Biological Warfare," a Report to the Secretary of War by George W. Merck, 7, RG 165, Entry 488, Box 182, National Archives, quoted in Harris, *Factories of Death*, 191.

¹⁸⁷ Ibid.

¹⁸⁸ Ibid.

¹⁸⁹ Records of the Army Staff, "Biological Warfare", undated (1944?) questionnaire, Army-Intelligence Document File, ID 919284, targets-BW-Japan, RG 319, National Archives, quoted in Harris, *Factories of Death*, 166.

Sanders' and Thompson's footsteps, Dr. Norbert H. Fell, Division Chief of the Planning Pilot-Engineering Section, was sent to Japan to survey the existing data.¹⁹⁰ He concluded that "the information seemed reliable enough to justify further interrogations of leading members of the former Japanese B.W. [*sic*] organization."¹⁹¹

Fell continued to interview key ex-practioners in the Japanese CBW program. However, they continued to "be economical with the truth" in regards to their roles and knowledge of the CBW program. Fell learned through an informant, that the ex-unit members had formerly been evasive with Sanders during their interviews. When the Japanese BW experts first met with the interrogators, the Americans attempted to use scare tactics, such as intimidation and threats of being handed over to the Soviets, in hopes of gleaning BW information from them. Their plan backfired however as it caused them to become even less willing to speak freely for fear of their statements being used as evidence in war crimes trials. Therefore the Japanese scientists, and certainly Ishii, did not share their BW knowledge unless immunity from prosecution was guaranteed.

Through all of the interrogations and line of questioning, Ishii soon became aware of his CBW knowledge's worth and used it as a negotiating tool with the Americans. Through Naito Ryoichi, Ishii bartered an arrangement with American authorities whereby he would reveal his information in exchange for immunity from prosecution for war crimes. He was successful in avoiding imprisonment by feeding the information hungry scientists with his information, at only bits at a time.

In top secret cables army officials told Washington about their prisoners and made a policy suggestion: "(Lieutenant General Ishii, director of BW work) states that if
• guaranteed immunity from 'war crimes' in documentary form for himself, superiors

¹⁹⁰ Ibid., 192.

¹⁹¹ Chemical Corps, "Brief Summary of New Information about Japanese B.W. Activities," Norbert H. Fell to Chief, n.p. (Camp Detrick?), June 20, 1947, 1, quoted in Harris, *Factories of Death*, 192.

and subordinates, he can describe program in detail....[A]ggressive prosecution will adversely affect U.S. interests."¹⁹²

The U.S scientists and the SWNCC Subcommittee concluded that the information Ishii and others would offer was of great value in validating and enhancing U.S. research in BW and could possibly prompt new fields for future research. They would not permit the issue of war criminal responsibilities to interfere with their research. They had convinced the SWNCC, SCAP, and the War Department, even as high as President Harry Shippe Truman¹⁹³ to believe that if immunity from war crimes was not guaranteed to Ishii and the others, it would cause the discontinuation of the flow of valuable Japanese CBW information into their possession.

To help justify to the world the reason for not prosecuting the Japanese BW scientists, SCAP's Legal Section was brought in to create a judicial explanation.

The allegations against Ishii and the others, it was argued, were "based on anonymous letters...hearsay affidavits and rumors." Interrogations of many persons involved in BW Project in Manchuria and China "do not reveal sufficient evidence to support war crimes charges." The "alleged victims" were of "unknown identity." Charges against "Ishii..." including the claim that the "bacterial war army...conducted experiments on captured Americans in Mukden," were dismissed because they came from the Japanese Communist Party. The affidavits of captured Kwantung Army leaders and of Ishii subordinates submitted by the Soviets were discounted because of the source. Legal Section contended, moreover, that even if the statements of BW work were true, the affidavits did "not state that the (Japanese) General Staff intended to resort to bacteria warfare." (They) pointed out also that "none of our allies to date have filed war crimes charges against Ishii or any of his associates." Neither he "nor his associates are included among major Japanese war criminals awaiting trial."¹⁹⁴

With their justifications completed, it was agreed to keep all Japanese BW information in intelligence channels and to remain classified. If it remained classified, it

¹⁹² Piller and Yamamoto, *Gene Wars*, 40.

¹⁹³ Hal Gold, *Unit 731 Testimony*, (Singapore: YENBOOKS, 1996), 113.

¹⁹⁴ CINCFE(Carpenter, Legal Section, SCAP) to War (WDSCA WC), June 6, 1947, RG 153, 000.5, GHQ AGO Records, The National Archives, quoted in Harris, *Factories of Death*, 216.

could not be used in war trials as evidence. In essence, the U.S. would hide the Japanese BW experts' reprehensible crimes in their files denying the access and its existence from rest of the world. Therein lays the essence of the U.S guarantee of the Japanese ex-BW experts' immunity from war crimes prosecution in exchange for their extensive BW data.¹⁹⁵

The floodgates then opened and the U.S. scientists received nineteen "of the key figures in the BW program" to agree to write lengthy reports on human experiments. Ten former Unit 100 members also prepared a report on BW chemical and plant herbicide research as well as data on crop disease.¹⁹⁶ The U.S. scientists were shocked at how extensive a program the Japanese actually had. However, after reviewing the Japanese BW experts' accounts, the interrogators concluded sadly enough, that it was "evident that we were well ahead of the Japanese in production on a large scale, in...practical munitions." Their work with humans, however, was invaluable, since it could be coordinated with "data we and our Allies have on animals."¹⁹⁷

In summary, it can be said both military and civil U.S. BW officials, who were prohibited from engaging in activities as those performed by Ishii and the others, saw the intelligence value of such human rights violating practices more important than the issues of ethics or morality. Sadly, at the expense of those victimized by the Japanese, the quest

¹⁹⁵ A Major General Kikuchi Hitoshi, however, refused to cooperate with the U.S. authorities despite the immunity bargain. He received the same deal as the others who provided information and was let go with the warning that "he was not to reveal information to the Russians" on human experiments, field tests against the Chinese Army, mass production of fleas, Unit 731's chain of command, and, most important, "Instructions by US personnel". Norbert H. Fell to Assistant Chief of Staff, G-2, GHQ, Far East Command, "Interrogations of Kikuchi Hitoshi, May 1, 2, 5, 1947," second set of notes, 2, Document 006, n.p. (Camp Detrick?), June 24, 1947, quoted in Harris, *Factories of Death*, 196.

¹⁹⁶ Harris, *Factories of Death*, 201.

for world leadership in BW technology was the dominating concentration. This idea is prevalent in an official memo:

Evidence gathered in this investigation has greatly supplemented and amplified previous aspects of this field. It represents data which has been obtained by Japanese scientist at the expenditure of many millions of dollars and years of work. Information has accrued with respect to human susceptibility to those diseases as indicated by specific infectious doses of bacteria. Such information could not be obtained in our own laboratories because of scruples attached to human experimentation. These data were secured with a total outlay of Y250,000 to date, a mere pittance by comparison with actual cost of the studies.¹⁹⁸

B. Military

In the closing days of the war, the Soviets occupied Manchuria and closed off any foreign access to the region and made it clear to the Americans that it would remain so for quite some time. The Soviets had in their possession, a former BW location and approximately 30 former Unit 731 members.¹⁹⁹ The U.S., however, maintained the key figures. Both countries desired each other's information on Japanese BW. Yet the mutual distrust of both sides in the midst of the Cold War prevented either side from acquiring their demands and as a result, prevented both parties from grasping the whole extent of Japan's BW program.

The Soviets began their quest for Japanese BW information in 1947, in the name of the Joint Chiefs of Staff policy created in 1946,²⁰⁰ requesting the opportunity to

¹⁹⁷ Norbert H. Fell to Chief, Chemical Corps, "Brief Summary of New Information about Japanese B.W. Activities," 1, Document 005, n.p. (Camp Detrick?), June 20, 1947, Dugway Library, quoted in Harris, *Factories of Death*, 193.

¹⁹⁸ Edwin V. Hill, Chief, Basic Sciences, Camp Detrick, to General Alden C. Waitt, Chief, Chemical Corps, December 12, 1947, The National Archives, quoted in Harris, *Factories of Death*, 190.

¹⁹⁹ 441st Counter Intelligence Corps Detachment, "Subject: Russian Bacteriological Warfare Research," April 19, 1948, Document 14, U.S. Army Intelligence and Security Command Archive, Fort Meade, M.D., quoted in Harris, *Factories of Death*, 213.

²⁰⁰ The Joint Chiefs had ruled that, if the request was reasonable, allies were granted any information they requested from occupying authorities with one exception, "intelligence which, in the opinion of the American Commander responsible for action might jeopardize the security of the US...or derogate from US advantages in the field of scientific research and development." Washington, (Joint

interrogate Ishii and other BW experts. Aware that the United States had valuable Japanese BW sources, they offered some of their own information to support their request. They told the Americans that they possessed Japanese BW people who informed them of the human experiments and the destruction of all documents and where these had taken place. The Soviets conducted their own thorough investigation and confirmed the Japanese captives' stories to the United States. Needless to say, the Americans were ecstatic in the confirmation that the USSR did not have as much Japanese BW information as they did. After much stalling and out of purely selfish reasons, the Americans agreed to allow the Soviets to interview Ishii and others.

One of the many responsibilities assigned to the SWNCC Subcommittee was to prevent the Soviets from learning anything relating to Japanese BW research. The SWNCC Subcommittee knew they would be able to manipulate and orchestrate the meetings between the Soviets and BW experts by allowing the Japanese to divulge only what *they*²⁰¹ wanted disclosed. Furthermore, if the American BW people determined in the Soviets' questioning of Ishii and others that their "information is considered of such importance that its divulgence to the Soviets should not be permitted, they [the Japanese] should be instructed not to reveal such information to the Soviets."²⁰² The SWNCC Subcommittee also recommended "no mention of the US interview on this subject" should be revealed to the Soviets. The U.S. hoped that "by permitting this interrogation, under controlled conditions, the general trend of Soviet questioning might service as a

Chiefs of Staff) To CINCPAC [Commander in Chief of Army Forces Pacific], (For MacArthur), July 24, 1946, 2, RG 153, Entry 145, Box 73,000.5, The National Archives, quoted in Harris, *Factories of Death*, 209.

²⁰¹ Emphasis added.

²⁰² Harris, *Factories of Death*, 211.

key to Soviet knowledge and activity in the BW field.”²⁰³ The U.S. needed to secure Ishii’s and the other BW experts’ cooperation as a matter of national security and acquired their collaboration by having the U.S. interrogator

...(begin) all meetings with the now standard carrot-and-stick litany: 1. He promised that he was interested in the information they could provide him solely for scientific purposes. 2. He was not concerned with prosecuting them for war crimes. 3. The Soviets held two of their colleagues prisoners, and they confessed to having participated in human experiments. 4. Masuda Tomosada (was directly below Ishii and directed the Nanking BW facility) was cooperating fully with the Americans. 5. The Soviets would be interviewing them shortly. 6. They were not to disclose to the Soviets any information on human experiments, flea production, field tests, or organizational structure of the BW units, or that they had been briefed and given instructions by the Americans.²⁰⁴

On February 28, 1947 during a Subcommittee discussion, the SWNCC was able to convince the U.S. authorities, undoubtedly by taking advantage of SCAP’s desire for a continued smooth Occupation, of the implications should the Japanese ex-BW experts not be granted immunity.

...it is felt that the use of this (Japanese BW) information as a basis for ‘war crimes’ evidence would be a grave detriment to Japanese cooperation with the United States occupation forces in Japan.²⁰⁵

The debate over the “immunity question” and the SWNCC Subcommittee’s planning of the impending meetings had delayed the Soviets’ request for so long that they became angry and demanded Ishii and the others delivered to them to face war crimes trials in the USSR. The U.S. believed it most desirable that the ex-BW experts avoid prosecution as war criminals by *any* nation, especially the Soviet Union. Based on the fact that America wanted the Japanese BW experts’ information exclusively, the

²⁰³ Ibid.

²⁰⁴ For example, June 24, 1947 Fell Report, “Interrogation of Murakami, Takeshi, May 10, 1947;” “Interrogation of Ota, Kiyoshi, May 10, 1947,” quoted by Harris, *Factories of Death*, 200.

Subcommittee rationalized that "since it is believed that the USSR possess only a small portion of this technical information, and since any "war crimes" trial would completely reveal such data to all nations, it is felt that such publicity must be avoided in interests of defense and security of the U.S."²⁰⁵ Most importantly, the U.S. found themselves in a no win situation, a "Catch 22". If the Japanese scientists were to be indicted under war crimes for BW, the secret American BW program would be compromised because the American prosecution could not try the defendants adequately without revealing their own extensive knowledge of BW. The importance of the secrecy on the subject of American and Japanese BW research information is revealed in an April 15, 1948 inter-office memorandum from a Lieutenant Colonel Aurell:

All agents entrusted (sic) with the handling of this subject (Ishii, his experiments and activities) should be cautioned that nay information, which may be obtained (on Ishii and BW) has international implications. It is of a highly sensitive nature, and that every precaution must be taken to maintain its secrecy. The number of persons dealing with this subject should be kept at a minimum.²⁰⁶

After six months from their initial request, the Soviets would find it was not worth the wait. The Soviets were finally permitted to interrogate their subjects in the presence of American officers. Unfortunately for them, the SWNCC Subcommittee's scheme to gain cooperation from the former Japanese BW experts was successful, resulting in the Soviets gaining little information.

²⁰⁵ Taken from a second copy of SFE 188/1, "note by the Secretary", February 28, 1946, 1, or attachment designated "Appendix 'B', Discussion, SFE 188/2, 7, RG 165, Box 165, SWNCC 351, The National Archives, quoted in Harris, *Factories of Death*, 212.

²⁰⁶ CIS 441st CIC Det, "No. 731 Ishii Unit," by Lt. Colonel Aurell, April 15, 1948, Document 13, US Army Intelligence and Security Command Archive, Fort Detrick, Md., quoted in Harris, *Factories of Death*, 207.

C. Political

1. Anti-Communist Supporter in Asia

In the *Basic Initial Post Surrender Directive* of August 29, 1945, the term “war criminals” is defined as:

Persons charged by the Supreme Commander or appropriate United Nations agencies with being war criminals, including those charged with having visited cruelties upon United Nations prisoners or other nations, shall be arrested, tried, and, if convicted, punished. Those wanted by another of the United Nations for offenses against its nationals, shall, if not wanted for trial or as witnesses or otherwise by the Supreme commander, be turned over to the custody of such other nation.²⁰⁷

With the surrender of Japan to the Allies in August of 1945 resulting in the Occupation by General MacArthur, the world saw the beginnings of the Cold War Era. The U.S. and Soviet governments who had just finished the war as allies saw the beginnings of their relationship’s deterioration. With Chiang-Kai Shek’s flight to Taiwan, the Communists’ power in China grew. The threat of the then growing Communism in Asia, found the U.S. determined to keep Japan as a dependable Pacific ally, and eventually took increasing precedence over anything written in the *Basic Initial Post-Surrender Directive*.

The U.S. realized several years into the occupation that Japan was becoming the most important industrial nation in Asia. Even though General MacArthur had striven for this, it was now also a cause for concern. During the 1950’s the U.S. felt “that if perchance Japan, instead of being one of the free nations, should become a captive Soviet country, ...[it] would involve a major shift in the present power position in the world

²⁰⁷ John Livingston, Joe Moore, and Felicia Oldfather, *The Japan Reader 2: Postwar Japan, 1945 to the present* (New York: Pantheon Books, 1973), 10.

today.”²⁰⁸ They were acutely aware of Soviet aspirations. Stalin had even commented on the Soviet Union’s invincibility should they collaborate with Japan.²⁰⁹ However the Soviets were not totally enamored by the Japanese. Memories of the war were still fresh in their minds and felt there were many issues with Japan yet to be resolved. In fact, they continued to refuse the release of imprisoned Japanese war criminals convicted during the Khabarovsk trials. The U.S. recognized that the Soviets offered Japan a source of raw materials and markets, which could further Japan’s economic successes. It was in the U.S.’s best interest to prevent the Soviets from dangling this proverbial carrot in the face of Japan.

The U.S. was successful in dissuading Japan from dealing with the Soviets by promoting propaganda emphasizing the Sino-Russo relationship. Japan was constantly reminded of neighboring Communist activity such as the Soviet and Chinese involvement in Korea. As a result of their alliance in North Korea, the Chinese “were built up with heavy Soviet weapons...and [their] military modernizations used Soviet models and assistance.”²¹⁰ China’s ever-increasing military power was great cause for concern in Japan.

The U.S. succeeded in retaining Japan’s allegiance by promising to establish military bases, equipment and personnel to secure the safety and sovereignty of Japan even though ironically, it was the Americans who mandated Japan’s disarmament and

²⁰⁸ Personal Representative of the President on the Japanese Peace Treaty “Congressional Testimony on Japanese Peace Treaty,” January 21-23, 25, 1952, given by John Foster Dulles, quoted in Livingston, Moore, and Oldfather, *The Japan Reader* 2, 245.

²⁰⁹ Ibid.

²¹⁰ John K. Fairbank, Edwin O. Reishauer, and Albert M. Craig, *East Asia: Tradition & Transformation*, (Boston: Houghton Mifflin Company, 1978), 913.

demilitarization. The U.S. was able to continue securing its aims by offering such deals to keep democracy in Japan and prevent the spread of Communism in Asia.

2. Exculpation of Emperor Hirohito

The argument over the Emperor's responsibility during World War II is a subject that will forever be debated in history. Although during the Eastern war crimes trials, the defense plea of "superior orders" was offered more frequently than any other,²¹¹ those parties interviewed "in the early days of the occupation agreed either that Emperor Hirohito was uninformed of CBW research, or that it was done without his approval."²¹²

Some American officials also, at first, tried to explain freeing Hirohito from war crimes by giving the explanation, "...a military clique had "seized the power of Japan and defrauded the Japanese people into believing that the Emperor was behind the war," and that "the emperor had been merely a 'figurehead.'"²¹³ It is difficult to imagine however that Emperor Hirohito was unaware of Japan's BW experiments in the occupied territories even to the minutest extent. In fact, the only two military unit facilities created by Imperial edict were Unit 731 and Unit 100, under Hirohito's reign. The appropriate commanders in the Army as necessitated created all other units.

The Occupation saw the apprehension of former government officials and their employees, bureaucrats, and industrialists, or *zaibatsu* on allegations of war crimes. Virtually stripping away much of Japan's leadership, Occupation authorities were left with only a small pool of acceptable individuals to choose from, with untainted past

²¹¹ Piccigallo, *The Japanese on Trial*, 72.

²¹² "Report on Scientific [I]ntelligence Survey in Japan September and October 1945," Volume V, "Biological warfare," Sanders Report, Summary, 1-2, November 1945, Document 003, Fort Detrick Archives, Frederick, M.D., quoted in Harris, *Factories of Death*, 134.

²¹³ Keenan's statement in *London Times*, September 26, 1947; Horwitz, "Tokyo Trial," 497. Later in 1950, Keenan conceded that, "legally" Hirohito could have been tried and convicted as a war criminal in

militaristic or reactionary ties, to head the first postwar government. The Allied governments at the time feared that removal of the emperor would leave the Japanese people without a symbolic Japanese government around which they could unite, hampering early Occupational efforts.

As the *London Times*' Tokyo correspondent put it, Hirohito's "retention on the throne was necessary to prevent an administrative collapse."²¹⁴

It is said Emperor Hirohito was a very diligent ruler who met with his military advisors almost on a daily basis and painstakingly studied their military reports. He was also known for being frugal and insisted that government expenditures not be wasted on senseless and futile projects. Although the funds appropriated to support Japan's BW research were undoubtedly hidden in the Army's budget, Japan's BW operation was by no means inexpensive. It is hard to believe that after carefully scrutinizing the military budget, Emperor Hirohito did not know or never questioned where extra monies were being allotted.

Many of the members of the Emperor's extended Royal Family and close associates were directly or indirectly connected to, or at least aware of Japan's BW program, making the argument of Hirohito's ignorance of the subject hard pressed.

Prince Konoye Fumimaro was a descendant of the Fujiwara family who also knew most of Japan's secrets. He was involved in activities in China since the China Incident and became "the Imperial go-between in government"²¹⁵ for the reason that he was trusted by the military and was known to be cooperative in any program they

this interview, "Joseph Keenan Meets the Press," *American Mercury* 70 (1950): 459, quoted in Piccigallo, *The Japanese on Trial*, 16.

²¹⁴ *London Times*, November 13, 1948, quoted in Piccigallo, *The Japanese on Trial*, 17.

²¹⁵ Harris, *Factories of Death*, 141.

directed. Prince Konoye made the IMTFE's list of war criminals but avoided the Tokyo War Crimes Trial by committing suicide in December of 1945.

Two of the Emperor's brothers had contact with Ishii and other leading BW specialists. On February 9, 1939, his younger brother, "...Prince Chichibu, broke away from his busy military responsibilities and honored the meeting [a two and one half hour lecture by Ishii] with his royal presence and listened most intently to the proceedings."²⁰ His youngest brother, Prince Mikasa, toured Unit 731 headquarters in Ping Fan and recorded in his memoirs, "...films where large numbers of Chinese prisoners of war brought by cargo trains and lorries were made to march on the Manchurian plain for poison gas experiments on live subjects."²¹⁶ He also recalled: "A high ranking military doctor (Ishii?)²¹⁷ who took part in these experiments was telling me prior to this, at the time when Lord Lytton with his group was dispatched by the League of Nations [1932, at the time Ishii began his BW work in Manchuria] to investigate the Manchurian Incident, they [Ishii and company] attempted to give this group some fruit infected with cholera, but did not succeed."²¹⁸

Hirohito's cousin, prince Takeda Tsuneyoshi, was a Chief Financial Officer for the Kwantung Army during Japan's occupation of Manchuria. His responsibilities included appropriating monies to all of the BW stations in Manchuria. As part of his duties, under the alias of Colonel Miata Suneyochi, he frequently visited Ping Fan, as well as other Manchurian BW sites. He was also a "...staff member of the special committee established by the Kwangtung Army Command to oversee the operations of

²¹⁶ Ibid., 142.

²¹⁷ Harris's insert.

²¹⁸ Takahito Mikasa-no-miya, *Ancient Orient and I*, (Tokyo: Gakusei Sha Publishers, 1984), 16-17, quoted in Harris, *Factories of Death*, 142.

Units 731 and 100. His most important responsibility as a staff member was to determine who would be granted permission to visit Ping Fan and the satellite facilities.”²¹⁹ Takeda personally escorted any and all VIPs who toured Ping Fan.

The Emperor’s uncle and long-time friend, Prince Higashikuni Naruhiko, had a close working relationship with the Kwantung Army leaders throughout the occupation of Manchuria. He had toured the Ping Fan facility as well.

Finally, Kido Koichi was the Emperor’s most trusted advisor. He was appointed by the Emperor and Prime Minister and was the most powerful member of the Privy Council. He had very close ties with the military and as was his duty, was familiar with every phase of expansionist plans and projects. In fact, in absence of the volumes of documents immediately destroyed after Japan’s surrender, his diary was used as the main source of “document type” evidence by the prosecution. It is difficult to believe that he was unaware of Japan’s BW research. Kido was one of the 28 to stand trial during the Tokyo War Crimes Trial.²²⁰ He was sentenced to life imprisonment for over-all conspiracy and waging war against China, the U.S., British Commonwealth, and the Netherlands. Amazingly, he was acquitted of ordering, authorizing or permitting atrocities.

Most convincing in the debate over the Emperor’s knowledge of Japan’s BW activities is that the Emperor knew Ishii personally. They met on at least two occasions publicly in the 1930’s.²²¹ Also, both Wakamatsu’s and Ishii’s units received an Imperial

²¹⁹ Ibid., 143.

²²⁰ Shortly after his arrest, Kido stunned the prosecution by, on his own accord, divulging the existence of his voluminous diaries, which were written from January 1, 1930 to December 15, 1945. Many of his diary entries were used as evidence during the trial. It is believed, however, that his diary had been whitewashed before being turned over to authorities so as to vindicate himself and the Emperor.

²²¹ Kido Koichi, *Kido Koichi Nikki (Kido Diary): 2 volumes*, (Tokyo: Daigaku Shuppankai (University of Tokyo Press, 1966) passim, in Harris, *Factories of Death*, 144.

citation for its accomplishments. It is reasonable to believe that Hirohito would have looked into these units before bestowing any award with the Imperial seal.

As a result of these as well as other facts, the Emperor was placed at the top of the initial list of war criminals at the IMTFE. Great Britain, the Soviet Union, Australia, China, and New Zealand all urged his prosecution. On the contrary, General MacArthur, much to the dismay of the other Allied nations, wanted the Emperor as far removed from the trials as possible. For MacArthur, Hirohito's exemption from the trials was "a calculated political decision undertaken in the best interests of the Allied powers."²²² MacArthur is quoted to have made the statement, "His [Hirohito's] indictment will unquestionably cause a tremendous convulsion among the Japanese people, the repercussions of which cannot be overestimated."²²³

General MacArthur, via Washington, as the principal occupying power, had vetoed all Allied opposition. He told the chief Allied prosecutor that the Emperor was not only barred as a defendant, but also as a witness for the trial. Hirohito was not even to be interrogated.

Complaints came pouring in from "...government officials in Canberra, Wellington, Chungking, Moscow, Manila and Washington itself,...private organizations, such as the institute of pacific Relations; and the Japanese Communist Party."²²⁴

MacArthur stood his ground however and through persistence, eventually, although begrudgingly, made all those who protested "see things his way."

²²²Piccigallo, *The Japanese on Trial*, 16.

²²³Brackman, *The Other Nuremberg*, 78.

²²⁴Moscow Radio Broadcast, in *New York Times*, May 5, 1946; *London Times*, January 12, 1945; *China Press*, October 15, 1945; *New York Herald Tribune*, November 13, 1945, quoted in Piccigallo, *The Japanese on Trial*, 16. For Australia, New Zealand and China's lists of war criminals naming Hirohito as the "No. 1 war criminal," see *New York Herald Tribune*, November 6, 11, 1945, as recommended by Piccigallo, *ibid.*, 221 n33.

In his memoirs General MacArthur wrote:

Realizing the tragic consequences that would follow from such an unjust action (the indictment of the Emperor), I had stoutly resisted such efforts. When Washington seemed to be veering towards the British point of view, I had advised that I would need at least one million reinforcements should such action be taken. I believed that if the Emperor was indicted, and perhaps hanged, as a war criminal, military government would have to be instituted throughout Japan, and guerilla warfare would probably break out. The emperor's name had then been stricken from the list.²²⁵

And thus in 1946, with SCAP's insistence, all eleven Allies agreed to exempt Hirohito from war crimes trials.

Aside from MacArthur's theory of "chaos in Japan", it is interesting to speculate that if Hirohito had been called even as a witness, he could have voluntarily shouldered responsibility for the whole war and as a consequence all others indicted would be acquitted. For all of the differences MacArthur and the other Allied nations had, it is reasonable to believe they would not want to see those who had a direct hand in the atrocities walk free.

Although the Allied prosecution had been directed on the issue of the Emperor, the extended Royal Family's ties to war crimes would surely make the situation difficult. As a result, the majority would never see the courtroom. In essence they were protected by their damaging proximity to the Emperor with the exception of one. Kido Koichi was the only figure at the Tokyo War Crimes Trial indicted solely because of his relationship to the Emperor. Based on the theory that the Emperor was only a figurehead and was solely misguided by his advisors, the prosecution could push the issue that Kido had exercised disastrous influence on, and thereby absolving responsibility of the Emperor.

²²⁵ Douglas MacArthur, *Reminiscences*, (New York: McGraw-Hill, 1964), 287-288, quoted in Richard H. Minear, *Victor's Justice: The Tokyo War Crimes Trial*, (Princeton: Princeton University Press, 1971), 111-2.

In conclusion, MacArthur's determination not to jeopardize the security of the occupation or the future of Japanese-American relations by involving the Emperor in the IMTFE, prevented any of the ex-unit members from appearing in the courtroom. The importance in concealing the knowledge obtained from the ex-BW experts and the terms of their immunity deal with the U.S. was twofold—to protect national interests and to prevent embarrassment should the deal be made public.

✓ V. The Legacy of the Past

1. Renunciations of CBW

A. Geneva Protocol of 1925

As previously mentioned, The League of Nations in Geneva agreed to a protocol which was signed by 40 nations in an attempt to limit the potential use of biological weapons. It stated as follows:

Whereas the use in war of asphyxiating, poisonous or other gases, and of all analogous liquids, materials or devices, has been justly condemned by the general opinion of the civilized world; and

Whereas the prohibition of such use has been declared in Treaties to which the majority of Powers of the world are Parties; and

To the end that this prohibition shall be universally accepted as a part of International Law, binding alike the conscience and the practice of nations;

Declare: That the High Contracting Parties, so far as they are not already parties to Treaties prohibiting such use, accept this prohibition, agree to extend this prohibition to the use of bacteriological methods of warfare and agree to be bound as between themselves according to the terms of this declaration....

...The present Protocol will come into force for each signatory Power as from the date of deposit of its ratification, and, from that moment, each Power will be bound as regards other Powers which have already deposited their ratifications.²²⁶

This protocol, however, contained no means of verifying whether or not a nation was involved in CBW research, use, or had such in their possession. Therefore after the signing of the agreement, signatory nations were eventually able to adopt the mentality that the protocol was "...morally binding only if they were fighting countries that had themselves signed the protocol."²²⁷ Most countries continued their research in biological weaponry and felt it sanctionable if used only against non-signatory nations. In

²²⁶ "Protocol for the Prohibition of the Use in War of Asphyxiating, Poisonous or other Gases, Bacteriological Methods of Warfare," quoted in A. Boserup, *The Problem of Chemical and Biological Warfare, Volume III: CBW and the Law of War*, (Stockholm: SIPRI, Almqvist & Wiksell, 1973), 155-6, available from <http://projects.sipri.se/cbw/docs/cbw-hist-geneva-eng.html>; Internet; accessed March 25, 2003.

²²⁷ Anthony Daniels, "Germs Against Man," *National Review* Vol. 53 Issue 23, December 3, 2001, 42, available from Academic Search Premier [database on-line]; <http://web18.epnet.com> EBSCO Publishing, accessed June 13, 2003.

summary, the nations continued to engage in BW activities even after signing the agreement making the Geneva Protocol futile.

B. 1972 Biological Weapons Convention & 1989 Anti-Terrorism Act

For decades, the international community did not involve themselves with the subject of CBW. It was not until 1969 when U.S. President Nixon officially renounced American BW capability that the topic had entered international headlines again. The Biological Weapons Convention²²⁸ then came three years later. Similar to the Geneva Protocol of 1925, the 1972 Convention sought that all signatory nations prohibit any chemical and biological weapons capability. This fifteen article document encompassed more of the details regarding the international CBW situation than its 1925 predecessor. The following eleven articles are worth mentioning in regards to this paper:

Article I—Each State Party to this Convention undertakes never in any circumstance to develop, produce, stockpile or otherwise acquire or retain:

1. Microbial or other biological agents, or toxins whatever their origin or method of production, of types and in quantities that have no justification for prophylactic, protective or other peaceful purposes;
2. Weapons, equipment or means of delivery designed to use such agents or toxins for hostile purposes or in armed conflict.

Article II—Each State Party to this Convention undertakes to destroy, or to divert to peaceful purposes, as soon as possible...all agents, toxins, weapons, equipment and means of delivery specified in article I of the Convention, which are in its possession or under its jurisdiction or control...

Article III—Each State Party to this Convention undertakes not to transfer to any recipient whatsoever, directly or indirectly, and not in any way to assist, encourage, or induce any State, group of States or international organizations to manufacture or otherwise acquire any of the agents, toxins, weapons, equipment or means of delivery specified in article I of the Convention.

Article IV—Each State Party to this Convention shall, in accordance with its constitutional processes, takes any necessary measure to prohibit and prevent the development, production, stockpiling, acquisition or retention of the agents, toxins, weapons, equipment and means of delivery specified in article I of the Convention...

²²⁸ It is formerly referred to as *Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on their Destruction*.

Article V—The States parties to this Convention undertake to consult one another and to cooperate in solving any problem which may arise in relation to the objective of, or in the application of the provisions of, the Convention...

Article VI—1. Any State Party to this Convention which finds that any other State Party is acting in breach of obligations deriving from the provisions of the Convention may lodge a complaint with the Security Council of the United Nations...2. Each State Party to this Convention undertakes to cooperate in carrying out any investigation which the Security Council may initiate...

Article VII—Each State Party to this Convention undertakes to provide or support assistance...if the Security Council decides that [a] Party has been exposed to danger as a result of violation of the Convention.

Article VIII—Nothing in this Convention shall be interpreted as in any way limiting or detracting from the obligations assumed...at Geneva on June 17, 1925.

Article IX—Each State Party to this Convention affirms the recognized objective of effective prohibition of chemical weapons...

Article X—1. The States Parties to this Convention undertake to facilitate, and have the right to participate in, the fullest possible exchange of equipment, materials and scientific and technological information for the use of bacteriological (biological) agents and toxins for peaceful purposes...2. This Convention shall be implemented in a manner designed to avoid hampering the economic or technological development of States Parties to the Convention or international cooperation in the field of peaceful bacteriological (biological) agents and toxins and equipment for the processing, use or production of bacteriological (biological) agents and toxins for peaceful purposes in accordance with the provisions of the Convention.

Article XI—Any State Party may propose amendments to this Convention....²²⁹

Demonstrated through the above articles, it is apparent that once again valiant efforts were put forth to rid the world of the threat of BW employment. However, again in the interest of immense potential scientific and military implications, the status quo was barely altered.²³⁰

Concerns regarding the possible violation of the 1972 Convention prompted the enactment of the Biological Weapons Anti-Terrorism Act of 1989. A strictly U.S. document enacted by the Senate and House of Representatives, it was signed into law in

²²⁹ United Nations Office of Geneva International Treaties Collection, "Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on their Destruction," 1-4, available from http://www.unog.ch/frames/disarm/distreat/bac_72.htm; Internet; accessed on June 14, 2003. Some articles have been edited, however all are verbatim. Ellipses have been added where words have been omitted.

²³⁰ For more information on postwar CBW programs of the U. S. and the U.S.S.R. see, Piller and Yamamoto, *Gene Wars*, 34-46 passim.

1990 and basically mandates “life imprisonment for violating the Biological Weapons Convention.”²³¹ More importantly, the following amendment is significant in regards to U.S.’s stance on international CBW situations:

IN GENERAL—Whoever knowingly develops, produces, stockpiles, transfers, acquires, retains, or possesses any biological agent, toxin, or delivery system for use as a weapon, or knowingly assists a foreign state or any organization to do so, shall be fined under this title or imprisoned for life or any term of years, or both. *There is extraterritorial Federal jurisdiction over an offense under this section committed by or against a national of the United States.*²³²

What makes this document noteworthy, is that aside from its attempt at preventing the violation of stipulations set forth in former prohibitory documents, the 1989 document attempted to further provide a sense of security to Americans in regards to CBW terrorist acts against U.S. citizens.

2. The Victims

Once the Japanese were aware of Japan’s impending surrender in 1945, they immediately began to destroy evidence of their CBW activities. This involved not only the mass burning of research documents, records, and notes, but also the release of plague-infected rats into the countryside, the dumping of viral munitions and toxins into streams and rivers, and the murder and mass burial of any remaining infected “patients”/prisoners. This resulted in, even many years after the Japanese had left, epidemics of plague, birth defects, and unexplainable illnesses and deaths for Chinese living where the “factories of death” had been.

²³¹ U.S. Public Law 101-298, (1990), quoted in Leonard A.Cole, “Risk and Biological Defense Research,” *The PSR (Physicians for Social Responsibility) Quarterly* 2, no. 1 (March 1992): 44.

²³² Senate and House of Representatives, *The U.S. Biological Weapons Anti-Terrorism Act of 1989*, Chapter 10—Biological Weapons, Section 175 (a), available from <http://www.sunshine-project.org/bwintro/uscode.html>; Internet; accessed July 15, 2003. Italics added for emphasis.

In 1997, a group of Chinese citizens, claiming to have been injured or lost relatives due to wartime BW activities, sued the Japanese government. They demanded an apology and \$84,000 each in compensation. Until 1982, even in the face of a mountain of evidence, Japan continued to deny even the existence of any Japanese BW program.

In the end, the Tokyo court decision handed down on August 27, 2002 merely acknowledged the existence and acts of Unit 731 and their associates. The presiding judge Koji Iwata announced the following statements:

The evidence shows that the Japanese troops, including Unit 731, used bacteriological weapons under the order of the Imperial Japanese Army's headquarters and that many local residents died.²³³

Furthermore, Judge Iwata used the terms "inhumane" and "truly horrible" in regards to the activities of Unit 731,²³⁴ acknowledging the harm caused to large numbers of the Chinese people.

However, conceding the existence of the Japanese CBW units and their activities was all the Japanese government "awarded" the Chinese plaintiffs. The court declined to award the victims damages, claiming that international law established in the San Francisco Peace Treaty of 1951, barred foreign citizens from seeking compensation for Japan's wartime actions from the Japanese government. No one can deny the irony in the court impudently refusing to compensate the victims by reason of "international law," while simultaneously acknowledging Japan carried out germ warfare, long outlawed by international treaty.

²³³ "Biological Warfare in China Confirmed," *WWII Today* 17, 5.(January 2003).

²³⁴ Jonathan Watts, "Court Forces Japan to Admit to Dark Past of Bioweapons Programme," *Lancet* 360, 9336, September 14, 2002.

3. The Perpetrators

Many of the ranking officers of the Japanese units went on to live long, undisturbed, respected, and some even prestigious professional lives. Some also held important positions in Japanese society after the war.

Ishii Shiro, the biggest perpetrator and leader behind the Japanese CBW units, was perhaps the only individual of this group of scientists who could not pursue any high profile type public positions after the war. Due to his notorious activities during the war, he became “Public Enemy Number One” on the Soviets’ “Most-Wanted List” of CBW war criminals. After spending his postwar years living a private and comfortable life continuing medical research, he succumbed to throat cancer at the age of 69.

Naito Ryoichi, who went on to become a member of the Epidemic Prevention Laboratory in 1951, established and became CEO of the Japan Blood Bank Company which eventually became Green Cross Corporation (Midori Juji Co., Ltd), one of the largest medical companies in Japan. Kitano Masaji, Hideo Futagi, as well as other former Unit 731 members were also involved in the company as spokespersons. The RFMR (Ryoichi Naito Foundation for Medical Research) was also established and continues to exist today. He died in 1982.

Dr. Ishikawa Tachiomaru who was once a Unit 731 pathologist, went on to become a professor at Kanazawa University, ultimately becoming president of the university’s medical school.

Dr. Okamoto Kozo, another pathologist and an actual squad leader from 1938 to 1945 in Pingfan, who performed numerous vivisection experiments, became a professor at Kyoto University where he became head of their medical department and eventually an

emeritus professor there. He also became director of the medical department at Osaka's Kinki University.

Yoshimura Hisato, who during wartime was the director of experiments pertaining to frostbite, held several prestigious positions after the war. The man who previously performed and documented experiments where living victims' limbs were frozen and thawed, perversely, found a quite lucrative career as a "freezing consultant" for a commercial fishery. Along with Kitano Masaji, he became a member of the Antarctic Special Committee. Additionally, he became the president of Kyoto Prefecture Medical College and also became the Japan Biometeorological Society's first president. Eventually he was forced to resign from the Biometeorological Society however, after his wartime activities were revealed in the early 1980s.

Dr. Tanaka Hideo, formerly Unit 731's expert on mass production of fleas, became Director of Osaka Municipal University's School of Medicine where he received an Order of the Rising Sun in March of 1978 for his research.

Dr. Yagisawa Yukimasa, who was a plant disease expert for Unit 731, became secretary of the Japanese Penicillin Association and became a member of the Society of Antibiotics.

Ikeda Nao, whose wartime activities have been publicly exposed through evidence indicating his involvement in experiments where tetanus was injected into the heels of POWs, went on to run a successful clinic specializing in blood diseases in a suburb of Osaka.

Kasahara Shiro, who researched certain strains of fever in Pingfan using human guinea pigs, went on publish papers based on his wartime activities. He eventually

became Vice-President emeritus of the Kitasato Hospital and Research Unit in Tokyo. Unlike some of his former cohorts, Kasahara has gone on record to express his guilt and remorse for the actions committed by Unit 731.²³⁵

Other former members have come out publicly to denounce their actions and actually are on a “campaign” to educate the Japanese and the international community of their war time actions with the desire to prevent anything as diabolical as this portion of history from ever occurring again.

4. Post World War II U.S. Use of CBW

The futility of past attempts to ban every aspect of CBW is apparent in the United States’ continual use of these weapons post World War II.²³⁶

A. Korean War

During the Korean War, as a result of having captured American pilots who admitted using “germ bombs”²³⁷ during their assault, North Koreans and their Chinese allies, backed by Stalin and the Soviet government, alleged that the United States had engaged in BW reminiscent of the methods used by Japan against China during World War II.²³⁸

The Chinese responded by forming an international investigative commission boasting experts from the Soviet Union, Italy, France, Sweden, Brazil, and Great Britain. Its 700-page report, issued in October 1952, concluded that “the peoples of

²³⁵ All information pertaining to former Unit 731 members adapted from NBC Dateline’s “Factory of Death: Unit 731,” broadcast August 15, 1995 found on the webpage entitled, *The Biochemical Warfare—Unit 731*, http://www.sjwar.org/731/731.htm#_Toc473232916 ; Internet; accessed July 3, 2003.

²³⁶ For more information on the history of CBW use in past wars and during peacetime, see the website entitled, *War and Peace: Chemical and Biological Warfare—Specific Conflicts*, hosted by The University of Western Australia; Faculties of Economics & Commerce, Education and Law, http://www.law.uwa.edu.au/intlaw/war_and_peace.htm .

²³⁷ Robert Harris and Jeremy Paxman, *A Higher Form of Killing: The Secret Story of Chemical and Biological Warfare*, (New York: Hill and Wang, 1982), 162-3, quoted in Piller and Yamamoto, *Gene Wars*, 48.

²³⁸ The U.S. claimed they were not aware of any BW atrocities committed by the Japanese during World War II.

- ✓ Korea and China did actually serve as targets for bacteriological weapons." The report indicated the Americans experimented with everything from fountain pens with infected ink to a range of vector techniques, including anthrax-tainted feathers and plague-ridden fleas and lice.²³⁹

Despite the internationally issued report, the United States vehemently denied all charges, and additionally challenged the legitimacy of the pilot's statements citing they were the result of brainwashing. Fearing the possible scandal should information regarding the "Japanese BW information for immunity deal" be revealed, the State Department immediately began "damage control" by ordering an investigation into the so-called "communist crusade."²⁴⁰

B. Vietnam War

During the Vietnam War, various herbicides, insecticides, and chemical irritants were employed as weapons by the United States during combat. They were given monikers such as "Agent Blue," "Agent White," "CS," "Malathion," and so on. After the end of the war, however, "Agent Orange" was the herbicide which was to become a household word.

²³⁹ Piller and Yamamoto, *Gene Wars*, p.48.

²⁴⁰ As recently as 1998, Moscow archives reveal that the ISC (International Scientific Commission) was hoaxed. For more on alleged BW use by the U.S. during the Korean War, see Tom Buchanan, "The Courage of Galileo: Joseph Needham and the "Germ Warfare" Allegations in the Korean War," *History—Great Britain* 86, 284 (2001): 503-22; Kathryn Weathersby, comp., "Deceiving the Deceivers: Moscow, Beijing, Pyongyang, and the Allegations of Bacteriological Weapons Use in Korea," *Cold War International History Project Bulletin* 11, (1998): 176-185; Milton Leitenberg, "New Russian Evidence on the Korean War Biological Warfare Allegations: Background and Analysis," *Cold War International History Project Bulletin*, Issue 11 (1998): 185-99; Stephen Endicott and Edward Hagerman, *The United States and Biological Warfare: Secrets from the Early Cold War and Korea*, (Bloomington: Indiana University Press, 1999).

“Agent Orange” is an herbicide which essentially destroys plants “by interfering with their normal metabolism.”²⁴¹ “Agent Orange” was the most commonly used herbicide during 1967 to 1969. Its purpose was to essentially deforest South Vietnam.

Aircraft and ground troops were utilized to administer the agent. Unfortunately, its total effects on the environment have only recently been fully understood. Dioxin, the major component of “Agent Orange,” has been established as an extremely “potent poison” and has been found to be existing in the food chain of Vietnam. Vegetation which survived the sprayings reportedly suffered permanent damage. Additionally, the soil’s nutrient content has shown a decrease which ultimately caused the rapid erosion of the soil.

In addition to the affected environment, animals and humans have shown effects from contact with the agent. It is well known that former U.S. soldiers who administered “Agent Orange” during combat have suffered serious health problems and even death as a result of contact with this agent. It is now thoroughly established that dioxin “can cause a wide range of organ and metabolic dysfunctions. In laboratory animals dioxin has shown to be carcinogenic (causing cancer) and teratogenic (causing birth defects) and mutagenic (causing genetic damage).”²⁴²

²⁴¹ Lorie Ritchie, “What is Agent Orange?: Chemicals of the Vietnam War Era,” available from http://www.lyghtforce.com/HomeopathyOnline/Issue5/articles/ritchie_orange.html; Internet; accessed July 12, 2003.

²⁴² Ibid.

C. Gulf War

During the Gulf War, soldiers as well as civilians were exposed to “chemical and biological weapons, depleted uranium, experimental drugs and vaccines, environmental toxins, and endemic infectious diseases.”²⁴³

In an effort to protect their troops from any of the above, the military attempted to inoculate the soldiers before heading out into battle. Unfortunately, as politicians, scientists, military experts and the like have been stating previous to the Geneva Protocol of 1925, it is futile to attempt to immunize military troops as each bacteriological and chemical agent consists of widely varying components. There is no magic “one pill” which will protect troops from the enemy’s CB weapon. The attempts made during the Gulf War are an excellent example of this futility. Troops were given PB (Pyridostigmine Bromide) as a pre-treatment drug in case of contact with a nerve agent. PB is only effective, however, if exposed to Soman and “actually increases adverse effects to exposures to Sarin.”²⁴⁴ Anthrax Vaccine was administered to a large population of the troops, but Botulinum Toxoid Vaccine for protection against botulism was only given to “approximately 1 % of the troops.”²⁴⁵

“Metal particulates” and fumes from oil well fires and sprayed diesel fuel used in reducing dust, and exposure to DEET (a topical insecticide) are just some of the naturally occurring environmental exposures experienced by civilians and troops during the Gulf War. Additionally,

²⁴³ Lorie Ritchie, “Biological and Chemical Agents of the Gulf War,” available from http://www.lyghtforce.com/HomeopathyOnline/Issue5/articles/ritchie_gulf.html; Internet; accessed July 12, 2003. See pp. 1-2 for the list of toxic substances people were exposed to during the Gulf War.

²⁴⁴ Ibid.

²⁴⁵ Ibid.

Leishmaniasis is a parasitic infection that is carried by sand fleas in Southwest Asia. Leishmaniasis can remain dormant in the body for long periods of time and manifest with non-specific symptoms such as rashes and can mimic chronic fatigue symptoms. Proper diagnosis and treatment is important as it can be fatal. It can also be sexually transmitted. Cholera and brucellosis are endemic to the Persian Gulf area.²⁴⁶

In conclusion, veterans of the Gulf War from all coalition countries, Iraqi and Kuwaiti civilians, "air stewards, [Department] of Defense contractors, Red Cross workers, media personnel and any family members who were present in the Persian Gulf" are all at risk of becoming infected. Perhaps through the experiences of Vietnam Veterans, it has been suggested by veterans' organizations that Gulf War Veterans refrain from donating blood or organs as the aftereffects of exposure during the war are still questionable. Also, anyone who may have come in contact with a soldier, dead or living, a piece of equipment, a worn uniform, *anything*²⁴⁷ which was in that particular area during the conflict could possibly infect anyone anywhere at anytime.

5. CBW Terrorism

As the CBW research, development, and application efforts put forth by nations during the immediate postwar era have already been examined, it is now toward the more recent nation-state CBW programs in operation that will be in brief, discussed.

Perhaps the most recent historically, scholarly, and officially acknowledged state-run CBW program, as its existence is now supported by official documents, was that of Pretoria during the latter part of the apartheid era in South Africa. President Pieter W. Botha justified its creation during the 1980s under the assertion that his country needed CBW counterattack capabilities in the face of increasing threats of attack by Soviet

²⁴⁶ Ibid.

²⁴⁷ Italics added for emphasis.

backed rebels within the Republic of South Africa as well as from other regions in Southern Africa.

The most celebrated undertaking of Pretoria's secret CBW program was "Project Coast." It was created in 1981 and was headed by cardiologist Wouter Basson.

Throughout the 1980s, as director of the South African Defense Force, Basson not only developed numerous top-secret CBW operations in many locations such as Angola, but also developed extensive international CBW connections leading to the production and stockpiling of an assortment of pathogens.

Some of the stockpiled pathogens were allegedly used to conduct BW inside South Africa itself. On April 11, 2002, after 30 months of trial proceedings, Basson was acquitted of charges for using CBW in the murders of nine people.

In the most recent news, allegations of Iraq's former leader Saddam Hussein's state-run CBW program has inundated the headlines, and is therefore worth mentioning as it relates to this paper. Claims of the existence of Iraqi CBW laboratories, proliferation of chemical weapons, and use of chemical warfare on the Kurdish people have been extensively reported. However, it seems until the situation in Iraq has somewhat settled, can a comprehensive understanding of the totality of their capabilities be grasped.

CBW is not reserved for use by national governments only. When CBW is administered by non-state groups it is more commonly referred to as "Bio-terrorism." Although in more recent years, incidents of bio-terrorism have seen an increase in frequency, it is by no means a recent trend.²⁴⁸ In 1915 "...a German resident in

²⁴⁸ For additional data on incidences of CBW terrorism occurrences from 1945-1994 see Harvey J. McGeorge, Public Safety Group, "Chemical and Biological Terrorism," Briefing Document, April 1996,

Washington, D.C., Dr. Dilger, secretly infected horses, mules, and cows being shipped to the Allies with anthrax produced in his own house...²⁴⁹ Consequently, he infected several hundred military personnel.

On an election day in 1984 in The Dalles, Oregon, a cult known as the "Rajneesh" infected 751 people with Salmonella laden salad. Their objective was to sicken people in order to incapacitate them enough to prevent them from voting. "The Salmonella was obtained from a type-culture collection, and the culturing work was carried out by a trained technician who belonged to the group."²⁵⁰

Between 1990 and 1994, the infamous Japanese religious sect known as Aum Shinri Kyo (Supreme Truth) attempted to produce biological agents and disperse them on nine different occasions in Tokyo and the surrounding area.²⁵¹ In 1990, they attempted to infect the Japanese Diet with botulinum toxin, and a few months later with anthrax, fortunately without success.²⁵² Authorities were unaware that in June of 1994, the Aum sect used Sarin in a Japanese location which resulted in injuries of 200 people and the deaths of seven. It was not until nearly a year later in March 1995, when the more publicly known incident involving the Aum cult releasing Sarin gas into the Tokyo subway system was the former incident figured out. The latter attack caused several hundred injuries and claimed thirteen lives.

The above are prime examples of how the threat of bioterrorism has increased over the years. The reasoning behind this is twofold. Firstly, as Donald Henderson, Director

Woodbridge, V.A.; Harvey J. McGeorge, "Chemical and Biological Terrorism: Analyzing the Problem," *The ASA [Applied Science & Analysis] Newsletter* 42 (June 16, 1994): 1, 13-14. Resources obtained from Leitenberg, "Biological Weapons in the Twentieth Century."

²⁴⁹ Daniels, "Germs Against Man," 42.

²⁵⁰ Leitenberg, "Biological Weapons in the Twentieth Century," 3.

²⁵¹ Ibid.

of the Center for Civilian Biodefense Studies at Johns Hopkins University believes, "...the widely held view that the scientific expertise required to produce and disperse lethal organisms is within the reach of only the most sophisticated laboratories"²⁵³ is a farce. He is quoted as saying, "Recipes for making biological weapons are available on the Internet," he argues, "and even groups with modest finances and basic training in biology and engineering could develop an effective weapon at little cost."²⁵⁴

For example, the perfect model is given in *The Military Surgeon*, where an undergraduate science student preparing his thesis on "Bacteriologic Warfare" selected anthrax "as the infectious agent best suited for military purposes."²⁵⁵ The student wrote:

What shall we say are the requirements for a perfect military pathogen? It attacks preferably both man and animals. It must be quick-acting, highly virulent, and capable of causing disease in small quantities. It must be highly resistant, capable of surviving outside the body under the most adverse conditions, and even resisting partial cooking or a careless attempt at sterilization (a spore former). The causative organism should be able to force its entrance through all the avenues of infection; respiratory tract, alimentary tract, and breaks in the skin. The disease should not be too actively contagious, and it must be very well understood, for pathogens should never be used without contemplating the possibility of their getting out of control. Finally, and perhaps most importantly, it should be possible to obtain large quantities of the pathogen in virulent strain and spore form with the least possible manipulation and delay.²⁵⁶

Thus, deducing from these words from a college student, one can only imagine what a trained, and more alarmingly, financed CBW terrorist is capable of achieving. The Aum cult is a prime example. Their membership included among them individuals with certain degrees of training in various fields of science. Also, through "front" companies and members' incomes they were able to acquire essentially unlimited funds

²⁵² Additionally, it is documented that sect members travelled to Zaire in an effort to obtain a culture of the Ebola virus.

²⁵³ "America the Unready," *The Economist* 354, 8154 (January 22, 2000): 34.

²⁵⁴ Ibid.

²⁵⁵ Fox, "Bacterial Warfare," 204.

²⁵⁶ Ibid.

that allowed them to purchase high-tech equipment and establish state-of-the-art facilities. Additionally, their unlimited wealth gave way to their ability to become financially qualified consumers in the CBW black market. Aum's attempts "to buy assistance and technology in the USSR to aid their efforts to produce both chemical and biological weapons" have been well documented.²⁵⁷

The second reason for the increase in the threat of bioterrorism, is the breakup of the Soviet Union. During the Cold War Era, the world was essentially "divided" into camps of Soviet alliance and American alliance.²⁵⁸ Varying nations' ideologies for the most part followed respectively. Now with the dual Soviet/American camp "arrangement" no longer in existence, the opportunity for a fanatical individual or individuals to create their own ideology has increased.

Adding to this, not all of the Soviet CBW weapons and scientists are accounted for as claims have been made that there are some that have gone "missing." Countries such as Libya, Iran, and Iraq are known to have taken great interest in Biopreparat's research and those who performed it. Biopreparat "involved more than 30,000 scientists, engineers and technicians, [sic] the top scientific talent in the Soviet Union and Eastern Europe."²⁵⁹ After the Soviet breakup, some of these 30,000 Biopreparat ex-employees undoubtedly peddled their weapons and expertise, in view of the fact that it is now known

²⁵⁷ Leitenberg, "Biological Weapons in the Twentieth Century," see also Leitenberg, "The Experience of the Japanese Aum Shinrikyo Group and Biological Agents," in *Hype or Reality: The "New Terrorism" and Mass Casualty Attacks*, B. Roberts, ed. (Alexandria, VA: CBACI, 2000), 159-172; Leitenberg, "Aum Shinrikyo's Efforts to Produce Biological Weapons: A Case Study in the Serial Propagation of Misinformation," 149-158, in Max Taylor and John Horgan, ed., *The Future of Terrorism*, (London: Frank Cass, 2000); Leitenberg, "Aum Shinrikyo's Efforts to Produce Biological Weapons: A Case Study in the Serial Propagation of Misinformation," *Terrorism and Political Violence* [Special Issue on the Future of Terrorism] 11, 4 (Winter 1999): 149-158.

²⁵⁸ Not intended as an "American-Eurocentric" statement.

²⁵⁹ Joseph D. Douglass Jr., "Chemical and Biological Warfare Unmasked."

that terrorist groups have visited Kazakhstan for the purpose of acquiring CBW related products.

Therefore in conclusion, the end of the Cold War can be directly attributed to the increasing threat of CBW terrorism i.e., the empowerment and increase in the number of fanatical groups desiring CBW capabilities in combination with the ease in which they can acquire CBW products and information.

VI. Conclusion

During World War II, the issues involved in the Pacific arena were as significant as the issues in the European theater. This is apparent in the fact that it was determined the conflict needed to be settled by the atomic bomb. As in any war, the pain and anguish were equally widespread. The events in the Pacific theater covered and affected as many continents with as many victims as in Europe, however it involved more civilizations. For this reason, it was deemed worthwhile to write this paper and to seek the reasons why postwar matters were handled differently in Asia than in Europe. It does seem quite incredible that the exculpation of former Japanese BW detachments cover-up conspiracy was so efficiently maintained not only throughout the three years of the Tokyo Trial, but also for so long afterwards.

To understand the motives behind the conspiracy, the issue of CBW, its history, and general overview was discussed. In review, humankind has seen naturally occurring organisms affect whole armies that have changed the outcomes of wars, and thus history. Adding to this, it is human nature for man to want to harness nature for his benefit. Examples range from as simple instances as fire for warmth or cooking and water for power through windmills, to unfortunately, organisms, disease, and chemicals as weapons. The problem of utilizing virulent organisms as a means of warfare is how to create a devastating outbreak in the enemy's forces while simultaneously not infecting their own. This is the central argument of BW as an effective weapon and has been discussed in scientific and medical circles for decades. The most frequent reason given for support of BW research is for the development of a defense in case of an attack. Assertions such as these where the need for development of vaccination programs are

claimed to be imperative, are delineated as a “medical defense.” However, it is futile and at most, self-defeating as well as detrimental. Vaccinations have proven to be ineffective against the control of organisms that mutate naturally. One must question how an intentionally mutated organism could be controlled. Additionally, if one is even privy to which BW agents would be used in an attack, inoculation must occur weeks or months ahead of exposure for a vaccine to work effectively. Nevertheless, “medical defense” is most often given as a reason to continue BW research because it sounds morally acceptable. In reality, “defensive” research ultimately leads to “offensive” research, i. e., to develop a defense against a particular delivery system, that particular delivery system must be in the researchers’ possession for the study to be accurate.

The Geneva Protocol was created to prevent the possession of BW—whether for defensive or offensive purposes—thereby reducing the possible threat of its use. However, the Protocol instigated just the opposite. For example, by emphasizing the fact that the international community felt CBW significant enough to outlaw its use, Ishii Shiro was able to persuade his superiors to create and support a national CBW program. Japan, as well as other nations understood that the world would not have attempted to outlaw CBW unless it was so potentially devastating.

This paper also discussed the BW programs of other nations. Most programs, excluding that of the Japanese, primarily began in an effort to protect their military personnel, or to reiterate once more, for “medical defense” purposes. These programs only caused more suspicion of other countries’ BW capabilities and intentions. With each nation’s increased threat of others’ BW capabilities, intensified the development of their

own BW programs. Consequently, the more nations embarked on their own programs, the greater the likelihood that their research transformed into offensive activities.

Next, this paper focused on the United States as the primary faction in the conspiracy involving the Japanese former BW experts. Now declassified volumes of documents, memos, and notes sent to and from authorities, as well as newspaper, magazine, and journal reports of the time reveal the United States was well aware of Japanese BW activity during World War II. Execution of justice toward these war criminals was assured time and again. Countless promises were made of justice being meted out at the Tokyo War Crimes Trial to those guilty as they were at Nuremberg. However, with the approval of U.S. General MacArthur, not one Unit 731 or associated member ever stood in a courtroom to answer for their crimes.

At the end of World War II, with the reasoning that America had carried the brunt of responsibility of the Pacific War, President Truman declared that the U.S. would have final word in occupation policy. Ultimately, it was determined that the U.S., through the IMTFE, would also dictate war crimes trial policy as it affected the U.S. and their plans for Occupied Japan. U.S. General Douglas MacArthur, as the head of the occupation forces in Japan, oversaw and directed information of a “national security” manner, and consequently never permitted information pertaining to the Japanese BW units to reach the courts. Militarily, the argument for the exculpation of the Japanese army doctors was made in the name of “national defense and security.” Specifically, the U.S. wished to maintain its secrecy and exclusivity of Japan’s BW data, especially from the Soviets. It is interesting to consider what role Unit 731’s data played in driving the Soviets to outdo America in nuclear capabilities. They may have made a contribution to the Cold War.

Exposure of known Japanese BW information during the height of the War Crimes Trials would have been, at the least, embarrassing to the U.S. Such exposure, if it occurred, would have led to demands that all those involved in the BW program be tried for war crimes. No one could then predict how many politicians, military officers, scientists, and members of the Royal Family would have been dragged into the affair. This would certainly have disrupted MacArthur's plans for his occupation operations.

Additionally, to try the Japanese BW experts would require the prosecution team to be knowledgeable in the area of BW. The prosecution would need to call upon their own BW experts and in so doing would reveal that a U.S. BW program existed, in violation of the Geneva Protocol. Therefore, it was in the best interest of the U.S. if the issue of BW was not included in the trial proceedings.

Finally, the American authorities believed that the conclusion of all Eastern war crimes trials would have to occur before any lasting, non-punitive peace treaty could be reached with Japan. It was believed a peace treaty would hasten the stability of Japan resulting in the nation becoming the United States' "non-Communist supporter in Asia." In January 1951, the United States and Japan made an official agreement that no other persons would be added to the list of war criminals. As a consequence of this agreement, the Japanese BW experts gained extra "insurance" against exposure.

Next, this paper discussed the methods in which Ishii and his associates escaped legal culpability. It can be said that from its inception that the Tokyo Military Tribunal gave more precedence to the victors convicting the *selected*²⁶⁰ vanquished than objectively judging all actual war crimes against humanity. This is evident in the

²⁶⁰ Emphasis added.

hanging of Hideki Tojo. Further investigation would have revealed that this man, during a crucial meeting in Tokyo as late as July 1944, was the major opponent on the proposal to use germ warfare against the U.S. However, by the end of 1947, what investigators did realize was that there was enough evidence to strongly suggest that Ishii and the other unit members had violated international law in conducting BW experiments that involved the use of human guinea pigs. There was so much evidence that any prosecutor could have taken their cases to the proper authorities and secured indictments and probable convictions. All that was needed was the desire of responsible officials to see justice done. Unfortunately, for the units' victims, the U.S. government had other priorities. They felt that Ishii and any other BW experts connected to him were too valuable to be subjected to a public international trial. It was decided they would justify to the public, their non-prosecution by concluding that the evidence against Ishii and the others was insubstantial by stating that many of the written allegations against the Japanese BW experts were signed anonymously or by Japanese Communists.

Additionally, the significance of the U.S. scientists in the story of the exculpation of Ishii and associates is also worthy of mention. The U.S. scientists had always stated from the beginning of the secret American BW program that "the value of biological warfare will be a debatable question until it has been clearly proven by experience."⁶¹ The American scientists' desire for data in the *forbidden fruit* of human experimentation to satiate the validity of their scientific conclusions was valued above the lives of countless Chinese nationals as well as their own countrymen's. They were prohibited by law and a code of ethics that prevented them from experimenting on humans and some believed there was always the possibility that these prohibitions could have affected the

outcome of their BW research. They saw to it by every means possible that the Japanese BW experts would feel free to disclose their BW information by ensuring them that they were conducting their investigation from a purely scientific point of view. In other words, their testimonies would not be used in war crimes trials. The deal of “information for exculpation” was sealed. The U.S. intelligence value, not war crimes, was the dominant factor in all discussions concerning the Japanese BW experts.

In the end their expectations were unfulfilled, however. They stated the Japanese scientists never actually disclosed any incriminating evidence. The fact is, Americans were far ahead of the Japanese in BW research and development by the time Japan surrendered in 1945. The only element of significant value was that it was the first known data on human subjects. The cost to the U.S. in terms of honor and integrity appears to be high in comparison to the worth of material it purchased from Ishii and the remaining BW specialists.

By 1948, at the conclusion of the Tokyo War Crimes Trial, the world had already endured the Nuremberg Trials. The new focus of concern was the emergence of the Cold War Era. Few people, if any were concerned with any Japanese war criminals escaping justice. It is for this reason, until the 1980s, that the issue remained untouched and was never pursued further.

In retrospection, it is difficult to conceive how any human being could have such indifference towards such atrocious acts as committed by the Japanese army units, regardless of national security, scientific or political reasons. It is interesting that in almost all communications between SCAP and Washington, the term “war crimes” with reference to BW, is enclosed in quotation marks. Furthermore, nowhere in any of the

official documents referenced in this paper, has any mention of the atrociousness or depravity of the ex-CBW experts' acts mentioned, or that they should be prosecuted for committing such acts. The authorities knew Ishii's detachments' wartime activities were truly horrible in that they knew if word leaked out about their "deal," the United States would face overwhelming embarrassment. This is apparent in a statement of a memo which states, "The utmost secrecy is essential in order to protect the interests of the United States and to guard against embarrassment."²⁸

In conclusion of the U.S. role in the conspiracy, there were several groups responsible for the exculpation of the Units 100, Ei 1644, 565, 2646, and 731 members—ALL parties can justify their inaction to prosecute the ex-BW experts on the basis of "doubling": U.S. politicians for maintaining a grasp over the occupation of Japan, U.S. military for national security reasons, and U.S. scientists for knowledge. It is for these aims longed for by the U.S., that the ex-BW experts were able to escape prosecution for their war crimes.

Finally, the consequences of the conspiracy in relation to postwar events were also discussed. For many of the former Japanese BW experts, it was inconsequential. Many obtained prominent positions in the medical field. Even those who chose to speak out about their condemning experiences have never legally been held accountable for their wartime actions. Additionally, the surviving wartime BW victims and their descendants, continue to educate about, protest against, and seek compensation for atrocities committed against them by the Japanese doctors. However, as of the completion of this paper, they have only been successful in the Japanese government

²⁸ Report of Investigation Division, Legal Section, GHQ, SCAP, "Report by Neal R. Smith," April

acknowledging that the Japanese BW program actually existed and that atrocities had been committed against them. Furthermore, Japan's continuing claim that they are not liable for compensation to these victims as stated under the San Francisco Peace Treaty of 1951, validates to a potential "war-maker" that crimes can indeed go unpunishable.

The issue of CBW not only resurfaced again during the Korean, Vietnam, and Gulf Wars, but is now regularly discussed, especially after the 9/11 attacks and the invasion of Iraq. It was only inevitable that as time went on that the subject of CBW experimentation would return to haunt others.²⁶¹ Additionally, with the Soviet breakup, non-state groups have been offered easier access to CBW resulting in the increase of incidents employing such technology.

One would conclude that with the discussed true risk-benefit factors of BW programs that a movement toward international agreements for the total removal of existing programs would have been successful and that prohibition would be *the*²⁶² most rational defense against a biological attack. However, Iraq is a perfect example of why such a movement can never be successful, that the threat of CBW will always remain, and cannot be eliminated. Provisions set forth by the Biological Weapons Convention of 1972 prohibiting possession of biological and toxic agents lacked the provisions to verify the compliance of its requirements or the stipulations to punish Saddam Hussein for violating them. International agreements have been proven to be inadequate and futile in that continuous knowledge is of greater value for the reason that preemption of an attack is what is coveted.

18, 1947, 1. The Joint Chiefs' instructions were referred to in this report as SWNCC 351/1, March 5, 1947. RG 31, Box 1434. 20, Case 330, The National Archives, quoted in Harris, *Factories of Death*, 208.

²⁶¹ As in Saddam Hussein's alleged use of the Kurds as CBW practice targets.

In conclusion, leaders of nations and non-state groups alike have determined the benefit factors of CBW outweigh its risks. To begin with, it is inexpensive in that only small amounts are needed, compared to its more conventional counterparts, to accomplish the same effects on a target. Secondly, CBW does not require highly trained technicians to employ it as it is easy to reproduce once it is acquired. Thirdly, it is the “ultimate” psychological weapon in that it is odorless and invisible. More so for warring nations, if employed, it defrays postwar rebuilding costs that would have been incurred if conventional weapons were utilized.

Finally, MacArthur intended the war crimes trials to not only focus on punishing the guilty, but also to set an example for the world to observe the greatness of international law at work. It was hoped that these trials would have a deterrent effect on potential future “war-makers” by demonstrating the legal culpability of former Japanese authorities. This ultimately leads to my final point regarding diverse groups’ views on the risks involved in CBW employment. What conclusions can potential “war-makers” deduce as they look upon the unaffected postwar lives of many former Japanese BW experts or the acquittal of South Africa’s Wouter Basson for CBW atrocities? History has proven that *although against international law*, experimenting with, producing, stockpiling, and employing CBW *does not*²⁶³ guarantee condemnation. Although the use of CBW will never be abandoned, it can most certainly be curtailed if more internationally committed discussions emphasizing its disadvantages, and examples of accountability for CBW involvement occur.

²⁶² Emphasis added.

²⁶³ Emphasis added.

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